TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 231 27

SAMUEL G. REED, APPELLANT,

vs.

THE MERCHANTS' MUTUAL INSURANCE COMPANY OF BALTIMORE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the district of Maryland, begun and held at the city of Baltimore, on the first Monday in April, (being the sixth day of the same month,) in the year of our Lord one thousand eight hundred and seventy-four:

Present, the honorable Hugh L. Bond, circuit judge; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal*l*; James W. Chew, clerk.

Among other were the following proceedings, to wit:

SAMUEL G. REED
vs.
THE MERCHANTS' MUTUAL INSURANCE COMPANY of Baltimore.

Be it remembered that heretofore, to wit, on the fourth day of November, in the year of our Lord 1872, the district court of the United States for the district of Maryland, transmitted to the circuit court here the following transcript of record, which is in the words and of the tenor following, to wit:

2 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States, in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday of June, (being the fourth day of the same month,) in the year of our Lord one thousand eight hundred and seventy-two:

Present, the honorable William F. Giles, judge Maryland district; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal*l*; James W. Chew, clerk.

Among other were the following proceedings, to wit:

Libel.—Filed May 30th, 1872.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY OF Baltimore. } Libel. In admiralty.

To the judge of the district court of the United States for the district of Maryland.

3 Samuel G. Reed, of the city of Boston, and State of Massachusetts, exhibits this, his libel, against the Merchants' Mutual Insurance Company of Baltimore, a corporation duly created under the laws of the State of Maryland, and engaged in the business of marine insurance in the city of Baltimore, in the State last aforesaid, in a cause of contract, civil and maritime. And thereupon the said Samuel G. Reed doth allege and propound as follows, to wit:

First. That on or about the first of November, 1867, the said Samuel G. Reed was the owner of the ship Minnehaha, then lying at Honolulu, Sandwitch Islands.

Second. That on or about the 7th of November aforesaid the said ship sailed from Honolulu, via Baker's Island, with the intention of there taking in a cargo of guano, to a port of discharge in the United States.

Third. That on the 14th day of January, 1868, the said Samuel G. Reed was still the owner, as was understood and believed at the time, of the said ship, and the said Merchants' Mutual Insurance Company of Baltimore, on the said 14th day of January, in consideration of a premium therefor to them paid by the libellant, duly issued and granted to the libellant, under the style of Samuel G. Reed & Co., its certain policy of insurance upon the said ship Minnehaha, lost or not lost, at and
4 from Honolulu, via Baker's Island, to a port of discharge in the United States, not east of Boston, with the privilege of Hampton Roads for orders, the risk to be suspended while the vessel is at Baker's Island loading, and thereby promised to insure for the libellant, under the style of Samuel G. Reed & Co., five thousand dollars ($5,000) upon the body, tackle, apparel, and other furniture of the said ship Minnehaha, the loss, if any, to be payable 30 days after proof of loss and proof of interest and adjustment exhibited to the assurers; the said ship being valued in said policy at sixty thousand dollars ($60,000;) against the usual perils of the sea and other perils in said policy mentioned.

Fourth. That the said ship sailed in ballast from Honolulu on or about the 7th of November, 1867, as aforesaid, on the voyage insured, being at the time in all respects tight, staunch, and seaworthy, and arrived at Baker's Island aforesaid on the afternoon of the 20th day of November, 1867; that the said ship came to her moorings at said island in safety, shortly after which a heavy gale with a heavy surf arose; that such gale continued with occasional intermissions, during which time the surf continued with unabated violence, until the 3rd December, 1867, when the said ship parted her moorings, and was, by the perils of the sea,
5 totally wrecked and lost.

Fifth. That at no time after the arrival of said ship at Baker's Island aforesaid was it possible to discharge ballast, or to receive cargo, or to commence the process of loading, or even the preparations for loading; no single act in reference thereto was or could have been judiciously done before the vessel's loss as aforesaid; and the violence of the winds and waves, and their adverse course and direction, prevented the ship from slipping her cables and getting to sea, or otherwise escaping the perils that surrounded her; and that the said ship was, on the day last aforesaid, and before her arrival at the port of discharge named in the said policy, by the perils and dangers of the seas, and by stormy and tempestuous weather and the violence of the winds and waves, totally wrecked and lost.

Sixth. That on or about the 9th of March, 1868, the libellant having received a full and particular account of the wreck and loss aforesaid, gave to the said Merchants' Mutual Insurance Company notice of an abandonment of said vessel, or of libellant's interest therein, to said company, and presented partial proofs of loss; but the said abandonment was rejected by the said insurance company together with
6 any further proofs of the loss. Whereupon the libellant, desiring to avoid vexatious and expensive litigations, and to have the liability of the underwriters under the terms of their respective policies, which were similar in cost, determined at as early a day as possible, instituted two representative suits, one against a company in Baltimore and one against the Insurance Company of the State of Pennsylvania, and prosecuted said suits with diligence, believing that a determination by the court of the questions in dispute would satisfy any

fair-minded underwriter, and thus dispense with needless litigation in the other cases. That both of the suits instituted as aforesaid terminated in favor of the libellant, one by compromise and the other by a verdict of the jury and judgment of the court for the full claimed under the policy sued upon, rendered on the 23rd of May instant, 1872, of all of which the said Merchants' Mutual Insurance Company have been informed and due demand made on them by the libellants for the amount claimed in this action at and before the bringing of the same.

Seventh. The libellant further alleges and propounds that on the 28th day of September, 1871, he duly presented and exhibited to the said Merchants' Mutual Insurance Company due proof of loss
7 and proof of interest and adjustment under said policy issued and granted by the said Merchants' Mutual Insurance Company as aforesaid, and demanded payment therefor, and that he was and has been at all times interested to an extent greater than the said five thousand dollars ($5,000) in the subject insured, and that he has duly performed and fulfilled all the conditions required of him by the said policy.

Eighth. That more than 30 days have elapsed since said proofs were presented, and that no part of the sum insured by said policy has been paid, although the said Merchants' Mutual Insurance Company of Baltimore was bound to pay the same on demand, or in thirty (30) days after proofs as aforesaid.

Ninth. That the aforesaid sum of $5,000 still remains unpaid and due *due* to the libellant, with interest thereon from the 10th day of April, 1868, although the libellant has often requested the said Merchants' Mutual Insurance Company of Baltimore to pay the same, which to do the said company hath heretofore refused and doth still refuse.

Tenth. That all and singular the premises are true.

Wherefore the libellant prays that process of monition may issue to the marshall of the district aforesaid, commanding him to cite and admonish the said Merchants' Mutual Insurance Company of Baltimore to appear before this honorable court on the 3rd day of June next,
8 or such other day to be inserted in said monition as the said court shall direct, then and there to answer the libellant in the premises according to the course of courts of admiralty, and the rules and practice of this court in civil causes of admiralty and maritime jurisdiction; and that this court will pronounce for the libellants' aforesaid demand against the said Merchants' Mutual Insurance Company of Baltimore, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice appertain, and as the court is competent to give in the premises.

SAMUEL G. REED.

ANDREW STERET RIDGELY, *Proctor.*

Summons.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to the marshall for the Maryland district, greeting:

We command you that you summon Merchants' Mutual Insurance Company of Baltimore, if they be found in your district, to appear before the judge of the district court of the United States of America, for the district of Maryland, at the United States court-room, in the

9 city of Baltimore, on the first Tuesday of June next, to answer unto Samuel G. Reed, of the city of Boston, and State of Massachusetts, in a cause of contract, civil and maritime, and how you shall execute this precept you make known to us in our district court for the district aforesaid; and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and seventy-two.

Issued 30th day of May, 1872.

[SEAL.] JAMES W. CHEW,
Clerk District Court.

Marshall's return.

Summoned.

E. Y. GOLDSBOROUGH,
U. S. Marshall.

Answer.—Filed June 14, 1872.

In admiralty.

To the honorable William Fell Giles, judge of the district court of the United States for the district of Maryland.

10 The answer of the Merchants' Mutual Insurance Company of Baltimore, a corporation duly incorporated under the laws of the State of Maryland, to the libel of Samuel G. Reed, heretofore exhibited against it in this honorable court, alleges and articulately propounds as follows, to wit:

First. This respondent does not know whether the libellant was or was not the owner of the ship Minnehaha on or about the first of November, 1867, and therefore neither admits nor denies the allegations of the first article of the said libel in reference thereto.

Second. This respondent does not know whether said ship did or did not sail from Honolulu, via Baker's Island, on or about the 7th of November aforesaid, with the intention of there taking a cargo of guano to a port of discharge in the United States, and therefore neither admits nor denys the allegations in the second article of said libel in reference thereto.

Third. This respondent does not know whether on the 14th day of January, 1868, the libellant was or was not the owner, as was understood and believed, of the said ship, and therefore neither admits nor denies the allegations in the third article of said libel in reference thereto. The respondent denies that any premium was paid to it by the libellant for a policy of insurance, but it admits that for a premium to be paid by Samuel G. Reed & Company to the respondent, the

11 respondent, on or about the 14th day of January, 1868, issued to said Samuel G. Reed & Company its policy of insurance, promising to insure the said Samuel G. Reed & Company to the extent of five thousand dollars, less what might be due for said premium, against loss upon the said ship Minnehaha, on a voyage from Honolulu, via Baker's Island, to a port of discharge in the United States, not east of Boston, with liberty to use Hampton Roads for orders, the risk to be suspended while at Baker's Island loading, and such loss, if any, to be paid in thirty days after proof of loss and proof of interest in the said vessel. But the respondent alleges that it was induced to execute said policy of in-

surance by misrepresentations of facts made at the time of applying for said policy by brokers, who, in applying therefor and in making such misrepresentations, were, and acted as, the agents of the person or persons for whose benefit said insurance was made, and in whose behalf said application was made.

Fourth. The respondent does not know whether the said ship sailed in ballast from Honolulu on the voyage on which she was insured on or about the 7th of November, 1867, or not; nor does it know in what condition she was when she is alleged so to have sailed; nor does it know whether she was lost in the manner alleged or not, and therefor' it neither admits nor denies the allegations in the fourth article of
12 the libel. But the respondent alleges that even if the allegations in said article be true, the loss of said ship occurred while the risk under the said policy was suspended, and the respondent is not liable therefor.

Fifth. The respondent does not know whether it is or is not true that at no time after the arrival of said ship at Baker's Island was it possible to discharge ballast or to receive cargo; but it denies that it was impossible to commence the process of loading, or even the preparation for loading, within the meaning of said policy; on the contrary, it alleges that if the allegations in the fourth article of said libel be true, said ship was, in the meaning of said policy, "at Baker's Island loading" as soon as she came to her moorings at that island for that purpose.

Sixth. The respondent admits that on or about the 9th of March, 1868, the libellant presented to it a copy of the protest of the master of said ship and other parties, as the preliminary proof required by said policy, and offered to abandon said ship to the underwriters. And it alleges that said papers satisfying the respondent that said alleged loss had occurred, if at all, while the risk under said policy was suspended, the respondent announced that conclusion to the libellant and returned to him said papers the day after the delivery of them as aforesaid
13 to the respondent. This respondent knows nothing about the suits alleged to have been instituted by the libellant against other underwriters, and it says that the allegations of the libel in reference thereto are irrelevant to any question at issue between the libellant and this respondent, and are made for no other purpose than to account for the inexcusable delay in the institution of these proceedings. And this respondent further alleges that, on the return, as hereinbefore alleged, of said preliminary proof, it supposed that the idea, if any ever seriously existed, of making any claim upon the respondent for any part of said alleged loss, had been abandoned by the libellant until the 28th day of September, 1871, when, as is alleged in the seventh article of the said libel, the libellant presented to it other papers as further preliminary proof under said policy. And the respondent says that it had never objected to the sufficiency of the preliminary proof which had been previously presented, and that the presentation of such other papers was but a pretext on the part of the libellant to affix another period for his right of action in a court of the State of Maryland, and thus to postpone the running of limitations, which had already, as hereinafter alleged, become a bar to the maintenance of his action therein, and that in the prosecution of that purpose, the libellant, on the 20th day of November, 1871, instituted suit against the respondent to recover for said
14 alleged loss in the superior court of Baltimore City, a court of the State of Maryland, of competent jurisdiction to determine upon the validity of said demand, and to enforce the same, if it rightfully existed. And the respondent alleges that said contract of insurance was

made in the said State of Maryland, and that there was, at the time of making the same, and still is, a statute of said State in force prohibiting the institution of proceedings on such contracts after the expiration of three years from the accrual of the right of action thereon, and that such suit having been instituted after the expiration of said prescribed period of limitations the respondent pleaded and relied on said defence, among others, and that the libellant, for the purpose of evading said defence, on the 30th of May, 1872, discontinued said suit, and on the same day instituted these proceedings. And the respondent is advised that even if the technical plea of limitations should not always be necessarily a bar to the maintenance of a suit in this honorable court, it will nevertheless not entertain a stale demand; and in determining whether or not a demand like this, over which it has jurisdiction concurrently with the common-law courts of the State in which it sits, is stale, it will, by analogy, adopt the period of limitations prescribed by law for the maintenance thereof in such State court, and especially that it will not lend its process, as it is here invoked, expressly for the purpose of evading a defence which is conclusive in the court which first had jurisdiction over the demand attempted to be enforced.

Wherefore the respondent, while denying, as it has ever done, that the said demand was ever due by it, also formally pleads and relies on said statute of limitations and staleness of said demand, and prays that this honorable court will not entertain the same.

Seventh. That all and singular the premises are true.

Wherefore it prays that said libel be dismissed with costs.

WALLIS & THOMAS,
For Respt.

GEO. B. COALE,
Prest. Merchts. M. Ins. Co. of Balto.

DISTRICT OF MARYLAND, *sct:*

Before the subscriber personally appeared on this fourteenth day of June, 1872, George B. Coale, president of the Merchants' Mutual Insurance Company of Baltimore, and made oath of the Holy Evangely of Almighty God, that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief.

JAS. W. CHEW,
Clerk Dist. Ct. & U. S. Commr.'s Office.

Agreement.

SAMUEL G. REED *vs.* THE MERCHANTS' MUTUAL INSURANCE COMpany of Baltimore.	In the district court of the United States for the district of Maryland.
SAME *vs.* THE MARYLAND INSURANCE & SECURITY COMpany of Baltimore City.	Same.
SAME *vs.* THE BALTIMORE MARINE INSURANCE COMpany of Baltimore City.	Same.

It is admitted that suits were instituted on the 20th November, 1871, in the superior court of Baltimore City against each of the above named

defendents, respectively, on the same policies of insurance sued on in the above-named cases in the district court and to recover for the same alleged losses; that general-issue pleas and pleas of limitation were filed in said suits, and that the plaintiff, without filing replications to said pleas, dismissed said suits on the 30th May, 1872, and after-
17 wards, on the same day, the suits in the district court were instituted.

REVERDY JOHNSON,
JAMES A. L. McCLURE,
Proctors for Libellant.

Agreement.

SAMUEL G. REED *vs.* MERCHANTS' MUTUAL INSURANCE COMPANY.	}	In the district court of the United States for the district of Maryland.
SAME *vs.* THE BALTIMORE MARINE INSURANCE COMPANY.	}	Same.
SAME *vs.* MARYLAND INSURANCE & SECURITY COMPANY.	}	Same.

It is admitted that there is no harbor or anchorage for ships at Baker's Island; that when ships arrive there they are moored in the open sea, in an exposed and perilous position, by the means hereinafter described, which were and had long been notoriously necessary and
18 in use at the time the insurances in these cases were effected, viz, an anchor weighing 5,600 pounds is fastened to a coral reef, and to it (the anchor) is attached a two-inch admiralty-tested bridle-chain 90 feet long, with a heavy swivel-schackle at the other end; to this heavy swivel-shackle is attached another two-inch admiralty-tested pendant chain 630 feet long, with another heavy swivel-shackle at its end. This last heavy swivel-shackle is attached to a floating buoy, 12 feet wide by 9 feet high. Two other chains, being 1¾-inch backing-chains, each 1,080 feet long, with a heavy swivel-shackle at the further end of each, are also attached to the first-mentioned heavy swivel-shackle, each of which said backing-chains is fastened to a separate anchor, and these anchors are fastened, some distance apart, to another coral reef nearer to the island than the coral reef first mentioned. To the aforesaid pendant chain of 630 feet length, another chain is fastened, which holds the ship. In this position and by these means, ships at Baker's Island are moored and remain, whether actually loading or not, and their cargo is sent aboard in small boats from the island. Their position and mooring are the same from the time of their arrival in front of the island until they leave.

It is also admitted that on the arrival of the Minnehaha at the island she moored in the position and manner above described, with ad-
19 ditional moorings, both of the island and of the ship, and was so moored when, by the violence of the winds and waves, caused by a storm, she separated from her moorings and was lost.

It is admitted that the diagram hereto annexed partially illustrates the manner of mooring above described, and it is agreed that the same may be referred to for that purpose.

ANDREW STERRETT RIDGELY,
WM. D. BOOTH,
Proctors for Libellant.

20 *Agreement.*

SAMUEL G. REED
vs.
BALTIMORE MARINE INSURANCE COMPANY.

SAMUEL G. REED
vs.
THE MARYLAND INSURANCE & SECURITY. Company.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE CO. OF Balto.

It is agreed that these cases shall be tried together; that the decrees in the two first named shall the same as that to be entered in the last named, and be entered to abide the final result of an appeal, if one be taken in the last named, but that if no such appeal be taken or if the said last case be settled otherwise than by a decision of the Supreme Court of the United States, either of the parties to either of the two first-named cases may prosecute such appeal in said two first-mentioned cases, or in either of them, so as to have the questions involved
21 therein decided by the circuit court or the Supreme Court of the United States, as such party may choose.

WALLIS & THOMAS,
For Respts.
J. A. L. McCLURE,
Proctor for Libellants.

Decree.

District court of the United States.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY.

This cause standing ready for hearing, and the libel, answer, proceedings, and proofs having been considered, it is thereupon by the court this sixth day of July, 1872, adjudged, ordered, and decreed that the libel be, and the same is hereby, dismissed with costs.

WILLIAM F. GILES.

From which said decree so as aforesaid passed, the said Samuel G. Reed, by his proctor in open court here, has prayed an appeal to the next term of the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next, and to him it is granted.

Thereupon it is ordered by the court here that the record and
22 proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same is transmitted accordingly.

Appeal-bond.

Know all men by these presents that we, David Bursley, jr., of Barnstable, county of Suffolk, State of Massachusetts, attorney in fact for Samuel G. Reed, and Grenville Loud, of the city of Baltimore, are held and firmly bound unto the Merchants' Mutual Insurance Company of Baltimore in

the full and just sum of three hundred dollars, lawful money to be paid to the said Merchants' Mutual Insurance Company of Baltimore, its certain attorney or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this fourth day of November, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately at a district court of the United States for the district of Maryland, begun and held in the city of Baltimore, on the first Tuesday in June, in the year of our Lord one thousand eight hundred and seventy-two, in a suit depending in the said court between Samuel G. Reed, libellant, and the said Merchants' Mutual Insurance Com-
23 pany of Baltimore, defendants, a decree was rendered and passed against the said Samuel G. Reed, and the said Samuel G. Reed having entered and obtained an appeal (to reverse the judgment and decree in the suit aforesaid) to the circuit court of the United States for the fourth circuit, in and for the district of Maryland, to be held at the city of Baltimore on the first Monday of November instant:

Now, the condition of the above obligation is such that if the said Samuel G. Reed shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SAML. G. REED,
By DAVID BURSLEY, JR., [SEAL.]
Attorney.
GRENVILLE LOUD. [SEAL.]

Signed, sealed, & delivered in presence of—
JOHN. H. LOWE

"Bond approved 4 November, 1872.

"WILLIAM F. GILES."

In testimony that the aforegoing is a true copy taken and made from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of the said district court this fourth day of November, in the year eighteen hundred and seventy-two.

[SEAL OF COURT.] JAMES W. CHEW,
Clerk Dist. Court.

24 *Deposition of witnesses on the part of appellant.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 28th day of February, in the year of our Lord one thousand eight hundred and seventy-three, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me David Bursby, jr., a witness for the appellant in a certain civil cause depending in the circuit court of the United States in & for the district of Maryland, wherein Samuel G. Reed is appellant, and the Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said DAVID BURSBY, jr., being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellant, makes oath, deposeth, and saith as follows, to wit:

1st interrogotory. State your name, age, residence, & occupation.

25 Answer. My name is David Bursby, jr. I am thirty-five years of age. I reside in Boston. I am a master-mariner.

2nd interrogatory. State your occupation in the fall of 1867.

Answer. I was master of the ship Minnehaha.

3rd interrogatory. State whether said ship was lost or not; and, if so, where.

Answer. She was wrecked on Baker's Island.

4th interrogatory. On what voyage were you then?

Answer. On a voyage from Honolulu to Baker's Island; thence to a port in the United States.

5th interrogatory. Were you in ballast or loaded from Honolulu?

Answer. In ballast.

6th interrogatory. What was your purpose in going to Baker's Island?

Answer. To get a cargo of guano.

7th interrogatory. State why you did not get that cargo.

Answer. Owing to bad weather and loss of ship.

8th interrogatory. State when you left Honolulu.

Answer. I cleared about the 1st of November, 1867. I sailed, I think, about the 6th and arrived at Baker's Island on the 20th of November.

9th interrogatory. Describe the position and locality of that island and what it is.

26 Answer. The position of that island is 13 $\frac{22}{60}$ miles north of the equator and 176 22 west longitude from Greenwich. It isa guano island. It is crescent-shaped.

10th interrogatory. To what part of the compass does the concave of the crescent lie?

Answer. Open to the westward and its back to the eastward.

11th interrogatory. How does the length of the island lie?

Answer. From about east-northeast to west-southwest.

12th interrogatory. When you came up to the island on the 20th of November, 1867, on what part of it did you lie?

Answer. On the western side of the island.

13th interrogatory. Is there a harbor there or not?

Answer. There is at the island no harbor.

14th interrogatory. State whether your vessel had come to moorings.

Answer. She came to moorings on the 20th of November, 1867.

15th interrogatory. What was the condition then of the ocean and the weather?

Answer. In the vicinity of that island at that time the water was smooth; wind was east-northeast; the weather was fine.

27 16th interrogatory. Did you make or not any preparations for loading; and, if not, why? State fully & in detail.

Answer. I moored my ship on the 20th of November, 1867, about 2 o'clock in the afternoon. I furled all my sails except the mizzentopsail; that was lowered down on the cap. I did not furl my sails with the gaskets, as they generally do when a ship is laying in harbor, but stripped them with rope yarns. I took my chain-sheets off the topsails, and put on large rope in the place of them. All this was done for the purpose of handling the ship quickly, in case I had an opportunity or

occasion to slip the moorings, and go to sea for the safety of the ship. This was all done on the afternoon of the 20th of November, before dark. In the evening, the wind died away to a calm, and continued so all night; from that date, 21st November, 1867, up to the 1st of December, it was calm, and faint airs from the westward; the current set in strong at the rate of 4 knots per hour to N. east, which would be almost directly upon the reef and the N. east part of the island, slacking a little at times, but increasing again to the same velocity; the ship was swinging about, that is hawsing about with the strength of the current, there being no commanding breeze from any particular point to stay the current. During that time, from the 20th November to
28 the 1st of December, I had my full crew, including myself, constantly at work, day and night, getting out hawsers to the moorings, which were there for the purpose of mooring ships to—to keep the ship from swinging in on the reefs, and to keep her as steady and as far off from the reef as possible.

In addition to this current and calm weather, there was a heavy swell rolling in from the westward, which brought still more strain on the moorings, and tending to bring the ship nearer to the reefs. From the 1st of December until the 3rd of December, the current and the weather were still worse, there being squalls and rains, and these squalls, coming from the westward, made it still worse for the ship, lying in the position she was obliged to be in. I had on the morning of the 3rd got out an eleven-inch hawser forward, to the top of No. 1 mooring—that was the mooring my bow-chain was fast to, or rather the mooring-chain was taken in through the ship's hawser-pipe, and fastened round the ship's windlass. I got another 9-inch hawser out, on the top of No. 2 mooring; at that time the ship lay parallel with the island itself, bridled between No. 1 and No. 2 moorings—rolling with the swell—nearly gunwales too; (that means the rail of the ship nearly to the water's edge when she rolls.) I let my port bow anchor down with seventy-
29 five fathom of chain; this anchor weighed four thousand pounds. I put a stream-anchor of twelve hundred pounds, with seventy-five fathom of one and a quarter inch chain, off the port quarter. I did this to catch the ship if possible, and back the moorings that were already there to the island, should she draw in sufficiently for the anchor to take hold on the reef. At noon on the 3rd, there were squally appearances to the westward; a very heavy squall was making up there, and I saw that it must surely come upon the ship, and should it strike her that the ship must go on shore. I put my crew, with the exception of myself, in a lighter, (that was dropped alongside the ship by the Kannakas, the inhabitants of that island for the purpose of working the guano at that time,) that I might save their lives should the ship go in on the reefs, which I knew must happen if the squall should strike the ship, and which it did do almost instantly after they were in the lighter. The squall struck with great force, the ship rose heavily on the sea, parted her bow-moorings on the standing part. The ship swung in, striking her fore foot on the reef, straining on the stern-moorings, which brought her broadside on, rolling and striking heavily on the reef, in the surf and breakers, which were making a complete breach over her. This was about one to two o'clock in the afternoon of
30 the 3rd of December, 1867. I was on board the ship at the time, having gone in with the ship, and staid on board of her until her masts had fallen and her bottom had been stoved in, then to save my own life I jumped overboard, and was taken ashore by six Kannakas through the surf, and landed on the beach with my leg broken. With-

in sixteen hours from the time *the time* the ship struck on the reef, the ship was entirely broken up, not a piece more than 40 feet long was left of her. I lost all of my private property.

17th interrogatory. State whether, during the period from the arrival of your vessel off the island to her shipwreck, you were enabled to get any rest whatever, and, if so, why not.

Answer. I got no rest whatever, but what I could catch a few moments at a time, by throwing myself down on the deck, nor did my crew, because it required the attention of each and every one on board to do all that was possible to be done under the circumstances to keep the ship from destruction.

18th interrogatory. State whether, during the whole of said period, or during any time thereof, to wit, from the 20th of November to 3rd of December, 1867, it was possible for you to strip your vessel down for loading, and, if so, why not.

Answer. I do not understand the question.

19th interrogatory. State whether, during the whole of said
31 period, to wit, from 20th of November to December 3rd, 1867, inclusive, or during any part of the time thereof, it was possible for you to discharge ballast, or to receive cargo, or to commence the process of loading, or even the preparation for loading, or any single act in reference thereto, and, if not, why not.

(Objected to as to form.)

Answer. From the time I arrived and made my ship fast to the moorings, up to the day she was lost, I did not have one moment that I could make any preparations either for loading or discharging ballast, or getting my ship away from the moorings to sea.

20th interrogatory. State whether you kept your vessel in as good condition to go to sea as possible, if the weather had admitted of it.

Answer. That was the first thing I did after making fast to the moorings, to have her in that condition, and that was done before dark, on the day of my arrival, and was kept so afterwards.

21st interrogatory. State whether or not Baker's Island is a dangerous island for vessels.

Answer. No more so than any other island that is in mid-ocean, that is open to the sea, and having the same facilities for mooring a ship, unless it is in consequence of bad weather.

22nd interrogatory. State whether or not a vessel is disabled to
32 a certain extent when loading, and whether she is in a more helpless condition when loading at Baker's Island than when not loading; if so, why not.

Answer. She undoubtedly is. She has to have some of her ballast out to get ready for loading; the vessel will be more or less lightened from her sailing-draught; she would have her water-casks, surplus dunnage, wood, and other movable articles taken up on her deck to make room for the cargo, thereby lumbering up her deck, rendering it inconvenient to get about to handle the ship, than it would be otherwise if it were not there. One or more of the side-ports would be out likely, or at least loose, without being caulked tight. All these things would have to be replaced and secured, which would take time to do, to make it safe for the ship to be put under sail. A portion of the crew would be likely to be below, and some on shore working the cargo. This would also take time to bring them, and put them in readiness to work the ship.

23rd interrogatory. State whether or not you were ashore from the time of your arrival off Baker's Island until you were carried there; and, if so, why not.

Answer. I was not out of my ship until I jumped out, for the reason that my ship needed all my care and attention, as well as that of the whole ship company, to take care of her, under the circumstances before stated.

33 24th interrogatory. State whether, during the whole of said period, to wit, 20th of November to 3rd of December, 1867, the ship could have been put in condition for loading.

Answer. She could not and was not; she had not commenced to load, or made any preparation for loading.

25th interrogatory. State when you returned to the United States.

Answer. I arrived in New York on the 2d of March, '68.

26th interrogatory. State whether you called upon the Merchants' Mutual Insurance Company of Baltimore, this respondent, and notified them of the loss of the Minnehaha.

Answer. I did.

27th interrogatory. State who was the owner of the Minnehaha at the time of her loss.

Answer. Samuel G. Reed, of Boston.

28th interrogatory. State if you know who composed the firm of Samuel G. Reed & Co., of Boston, on the 14th of January, 1868.

Answer. Samuel G. Reed alone.

29th interrogatory. Look at Exhibit A, and state if you know for whom the insurance as shown by said exhibit, effected in the name of Samuel G. Reed & Co., was effected.

34 Answer. For Samuel G. Reed; he composed the company at that time.

Cross-examination:

1st cross-interrogatory. For the purpose of loading or preparing to load with a cargo at Baker's Island, do vessels take out all of their ballast at once, or do they take it out gradually, from time to time, to make room for the cargo, as it is taken on board?

Answer. They do not take out all their ballast at once, Baker's Island or anywhere else. Generally, we take out quarter to one-half of the ballast at first; that is owing more the build of the ship, whether she will be safe or not.

2nd cross-interrogatory. Then you would not take out enou at one time to render the ship unsafe?

Answer. That would be owing wholly to the place and the bu ship, and her capability of doing without such portion of her ballast that would be discharged to make room for cargo.

3rd cross-interrogatory. Could not any ship retain while loading ballast enough to make her safe in the event of her having to put out to sea, or being driven out to sea?

Answer. In the first commencement of loading she could not.

4th cross-interrogatory. Why not?

35 Answer. Because you would have to remove a portion of her ballast to make room for her cargo.

5th cross-interrogatory. Might not such ballast as it might be necessary to displace for the purpose of making room for cargo be removed to another part of the hold until the cargo took its place?

Answer. The ballast might be removed, but it would put the ship out of trim, and render her unmanageable under sail.

6th cross-interrogatory. In case of its being necessary to put the ship again under sail, could not the ballast which had been removed from one part of the hold to another be again easily and properly adjusted?

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Answer. I got no rest whatever, but what I could catch a few moments at a time, by throwing myself down on the deck, nor did my crew, because it required the attention of each and every one on board to do all that was possible to be done under the circumstances to keep the ship from destruction.

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31 period, to wit, from 20th of November to December 3rd, 1867, inclusive, or during any part of the time thereof, it was possible for you to discharge ballast, or to receive cargo, or to commence the process of loading, or even the preparation for loading, or any single act in reference thereto, and, if not, why not.

(Objected to as to form.)

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Answer. Samuel G. Reed alone.

29th interrogatory. Look at Exhibit A, and state if you know for whom the insurance as shown by said exhibit, effected in the name of Samuel G. Reed & Co., was effected.

34 Answer. For Samuel G. Reed; he composed the company at that time.

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1st cross-interrogatory. For the purpose of loading or preparing to load with a cargo at Baker's Island, do vessels take out all of their ballast at once, or do they take it out gradually, from time to time, to make room for the cargo, as it is taken on board?

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1619

2nd cross-interrogatory. Then you would not take out enough ballast at one time to render the ship unsafe?

Answer. That would be owing wholly to the place and the build of the ship, and her capability of doing without such portion of her ballast that would be discharged to make room for cargo.

3rd cross-interrogatory. Could not any ship retain while loading ballast enough to make her safe in the event of her having to put out to sea, or being driven out to sea?

Answer. In the first commencement of loading she could not.

4th cross-interrogatory. Why not?

35 Answer. Because you would have to remove a portion of her ballast to make room for her cargo.

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Answer. The ballast might be removed, but it would put the ship out of trim, and render her unmanageable under sail.

6th cross-interrogatory. In case of its being necessary to put the ship again under sail, could not the ballast which had been removed from one part of the hold to another be again easily and properly adjusted?

Answer. It would not be safe to put the ship under sail under those circumstances.

7th cross-interrogatory. Could not the ballast which had been removed as supposed be replaced and re-adjusted before the ship was put under sail on the occurrence of any emergency showing the necessity therefor?

Answer. If there was sufficient time to replace that ballast, there would be no emergency in that case.

8th cross-interrogatory. How long would it have taken to trim the Minnehaha after you had displaced as much of the ballast as might be necessary to begin the loading of her?

Answer. Certainly two days.

9th cross-interrogatory. Of what did your ballast consist?

36 Answer. Of seven hundred and fifty tons of stone and sand.

10th cross-interrogatory. Do you mean to say that it would have taken two days to remove from one part of the hold to another as much of that ballast as was necessary to begin the loading?

Answer. It would, and more.

11th cross-interrogatory. Would the removal of ballast for the purpose of loading increase the risk of being driven on shore?

Answer. That would be according to circumstances.

12th cross-interrogatory. What circumstances?

Answer. The state of the weather after the ballast had been removed.

13th cross-interrogatory. What necessity would there be of leaving the side-ports open, or loose, or uncaulked, for the purpose of loading with a cargo of guano?

Answer. To facilitate the ship in loading, and discharging her ballast with dispatch.

14th cross interrogatory. How would it so facilitate her?

Answer. The ballast could be discharged, and the cargo taken in, quicker through the ports than over the sides.

15th cross-interrogatory. Would it be necessary to open the ports, or to leave them loose or uncaulked, for the purpose of discharging ballast or taking in cargo?

Answer. It would be particularly so at Baker's Island with a ship of the size of the Minnehaha, in order that no time might be lost in

37 getting her cargo in, and getting away from the island.

16th cross interrogatory. Could not the ballast be discharged, and a cargo taken in, through the hatches?

Answer. It could.

17th cross-interrogatory. If it increased the danger to open or leave loose the side-ports, would a prudent captain leave them open or loose when it was not necessary so to do?

Answer. It is always necessary to have them out when we are taking cargo in, or putting ballast out, through the ports.

18th cross-interrogatory. Why would any of the crew be more likely to be on shore when the vessel is engaged in loading than when she is not so engaged?

Answer. For the purpose of getting the cargo for the ship, and to the ship, when she is loaded by her own crew.

19th cross-interrogatory. Was it a part of the duty of your crew to assist on shore in doing anything necessary for the loading of the vessel at Baker's Island?

(Objected to.)

Answer. There was no time when I could release them from the care of the ship for them to go on shore, if the crew were so ordered by the

agent of the island; and to facilitate the loading of the ship, it would have been *there* duty to have assisted on shore.

20th cross-interrogatory. What gave the agent of the island a right to give any orders to your crew?

38 (Objected to.)

Answer. He gave no orders to my crew.

21st cross-interrogatory. You say in your previous answer that it would have been the duty of your crew to aid on shore in getting a cargo ready for your vessel, if so ordered by the agent on the island. Why was such their duty? Had the agent any authority to give such orders?

(Objected to.)

Answer. The crew ship on board for the purpose of performing any duty, either on shore or on board, wherein it will benefit the ship, its owners and underwriters.

22nd cross-interrogatory. You have not answered the question whether the agent of the island had any authority to give orders to your crew; and if he had, from whence such authority was derived.

(Objected to.)

Answer. I am not sure in my case whether the agent had such authority or not.

23rd cross-interrogatory. Could any one issue an order to your crew otherwise than through you?

Answer. It depends upon circumstances.

24th cross-interrogatory. So far as you know, the agent of the island had not a right to issue any orders to your crew, nor were they under any obligation to assist on shore in loading?

39 Answer. An agent has always a right to call upon a crew, or order the crew in any port, not excepting Baker's Island, to do anything that will be of benefit to the ship.

25th cross-interrogatory. Whose agent do you mean to say has such right?

Answer. Agent of a ship, and the agent of that island particularly.

26th cross-interrogatory. Was the agent at Baker's Island, to whom you have referred, the agent of the ship, or was he the agent of the company by whom the island was being worked?

Answer. Both myself and the crew were subject to his orders, as far as regards the loading of the ship at that island, if not interfering with their duty, and not rendering the ship any less liable to accident.

(Before the witness had given his last answer, the proctor for the respondent asked if there was a charter-party, for the purpose of ascertaining what was the duty of the crew in respect to the matter inquired about. The proctor for the appellant said that he would hand him the charter-party, with the understanding that he would use it as his evidence. It was accordingly handed to the proctor for the respondent, and by him under the circumstances put in evidence and marked "Exhibit B.")

40 27th cross-interrogatory. Could not any weather which would imperil a ship lying at her moorings at Baker's Island prevent her cargo from being sent out in lighters?

Answer. To that particular ship, yes.

28th cross-interrogatory. When the weather was such as to put the ship in danger, would not loading be necessarily suspended?

Answer. It would be impossible to do anything but take care of the ship.

29th cross-interrogatery. How do you know of whom the firm of

Samuel G. Reed & Co. consisted at the time the insurance in this case was effected?

Answer. From my own knowledge of the transactions of the business of the firm from time to time.

30th cross-interrogatory. Had there ever been any other members of that firm?

Answer. There had.

31st cross-interrogatory. Who was he?

Answer. There were two, James H. Kidder and Lyman Grimes; they had both gone out of the firm previous to this.

32nd cross-interrogatory. When had each of them gone out?

Answer. I can't recollect the day or date; it was before the loss of my ship and the time of my arriving home.

33rd cross-interrogatory. Were they partners when you left to go on your voyage?

41 Answer. One of them was—Lyman Grimes, I believe.

34th cross-interrogatory. You do not know more definitely when he ceased to be a partner than that it was before your return home?

Answer. I think it was early in 1867.

35th cross-interrogatory. When did you leave the United States on the voyage referred to in the charter-party?

An wer. I think it was in the year 1865. I returned to the United States March 2nd, 1868.

36th cross-interrogatory. When you left, I understand you to say that Mr. Grimes was a partner, & when you returned he was not; are you not necessarily ignorant, of your own personal knowledge, of the time when he ceased to be so, inasmuch as you were absent?

Answer. No, sir.

37th cross-interrogatory. Please explain how you can personally know what occurred in the United States while you were absent from it.

Answer. In a number of different ways; first, by letter direct from Samuel G. Reed, and from others connected with the house.

38th cross interrogatory. This is what you mean by personal knowledge?

Answer. Yes, sir.

39th cross interrogatory. Were you not absent from the country

42 on the 14th of January, 1868, when the policy sued on in this case was effected?

Answer. I was.

Redirect:

30th interrogatory. When a vessel is about to take in cargo at Baker's Island, and it is necessary to get rid of ballast, do you remove that ballast from one portion of the vessel to another, or do you discharge it?

Answer. We discharge it.

31st interrogatory. Have you any means of knowing since your return to the United States, on March 2nd, 1868, that Samuel G. Reed alone composed the firm of Samuel G. Reed & Co., on the 14th day of January, 1868? And, if so, state what those means are.

(Objected to.)

Answer. I have seen, by reference to the business of the office of Samuel G. Reed, with whom I have been connected ever since my return, that such was the case. I saw the former partner, Lyman Grimes, in San Francisco when I arrived there after the loss of my ship.

(Objected to.)

Signing of this deposition waived by the respective proctors.

ISAAC BROOKS, JR., *U. S. Comr.*

43 I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of David Bursby, jr., is consent of the respective proctors; and I do also certify that Mr. McClure appeared on behalf of appellant, and Mr. John H. Thomas on behalf of appellee.

And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 28th day of February, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

The exhibits referred to in the foregoing deposition are as follows, to wit:

44 EXHIBIT A. 3.

No. 3985. Vessel.

By the Merchants' Mutual Insurance Company of Baltimore.

This policy of insurance witnesseth: That the Merchants' Mutual Insurance Company of Baltimore have insured, and do hereby insure, agreeably to order, Samuel G. Reed & Co., for account of whom it may concern; loss, if any, payable to them or order, as well in own name, as in the name or names of all and every person or persons to whom the same doth, may, or shall appertain in part, or in the whole, lost or not lost, at and from Honolulu, via Baker's Island, to a port of discharge in the United States not east of Boston, with liberty to use Hampton Roads for orders. The risk to be suspended while vessel is at Baker's Island loading.

Five thousand dollars, upon the body, tackle, apparel, and other furniture of the good ship called the Minnehaha, whereof is master for this present voyage or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Sum insured, $5,000.

Beginning the adventure upon the said vessel, tackle, apparel, &c., at and from aforesaid, and so shall continue and endure until the said vessel be safely arrived at aforesaid, and until
45 she be moored twenty and four hours in good safety. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said vessel, tackle, &c., hereby insured, are valued at sixty thousand dollars, without any further account to be given by the assured to the assurers, or any of them, for the same. Touching the adventures and perils which the said Merchants' Mutual Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter-mart, reprisals, takings at sea, arrests, re-

straints, and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary, to and for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said vessel, or any part thereof, without prejudice to this insurance; to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured; nor shall the
46 acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; having been paid the consideration for this insurance, by the assured, or assigns, at and after the rate of seven per cent. net.

And in case of loss, such loss to be paid in thirty days after proof of loss, proof of interest, and adjustment exhibited to the assurers (the amount of the note given for the premium, if unpaid, and any or all unpaid premiums being first deducted,) but no partial loss or particular average shall in any case be paid unless amounting to five per cent. Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Merchants' Mutual Insurance Company of Baltimore shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Merchants' Mutual Insurance Company of Baltimore shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy, the said Merchants' Mutual Insurance Com-
47 pany of Baltimore shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. And it is further agreed that in case a total loss shall be claimed for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value shall be her valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk, at the port to which she then belonged. And, lastly, it is agreed that if the above vessel, upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this policy.

Premium	$350
Policy	1 25
	$351.25

In witness whereof the president of the said Merchants' Mutual Insurance Company of Baltimore hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their secretary in Baltimore, the fourteenth day of January, one thousand eight hundred and sixty-eight.

48 If the voyage aforesaid shall have been begun, and shall have

terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$5,000, (five thousand dollars.)

ALLEN A. CHAPMAN,
President.

WM. E. MORRIS, *Act'g Secretary.*

(Upon the margin of the foregoing policy of insurance is printed in red ink the following, to wit:)

In case of claim for loss or damage, a deduction of one-third from the cost of repairing or replacing the same shall be made, after deducting the value of the old materials, except in the case of anchors, and of sheathing of copper or other metal; a deduction of one-fortieth from the expense of repairing or replacing the metal sheathing, or any part thereof (after first deducting the value of the old metal and nails) shall be made for every month since the vessel was last sheathed until the expiration of forty months, after which time the cost of remetaling or repairing the same shall be wholly borne by the assured. If a technical total loss be claimed, similar deductions shall be made from the estimated repairs, and, unless the net cost thereof would exceed a
49 moiety of the value of the vessel after making such deductions the loss shall be deemed partial only.

Warranted free from claim for loss or damage arising from riot or civil commotion, or from seizure, capture or detention, by any vessel, armed or otherwise, or the consequences of any other hostile act of the Government or people of any of the States of this Union, or of the Confederates States, or of the United States.

(Endorsed:) 3015. No. 3985. Merchants' Mutual Insurance Company of Baltimore.

Vessel. Ship Minnehaha. Honolulu, via Baker's Island, to a port of discharge in the United States not east of Boston, with liberty to use Hampton Roads. Samuel G. Reed & Co.

$5,000 @ 7 per cent. net	$350
Policy	1 25
	351 25

Effected by Johnson & Higgins, 89 Wall st.

EXHIBIT B.

Charter-party.

It is hereby mutual'y covenanted and agreed by and between Samuel G. Reed & Co., agents for owners ship Minnehaha of the port of New York of of the burthen of $1,691\frac{67}{100}$ tons register measurement, or thereabouts, now on her passage to Japan from N. York, party
50 of the first part, and the American Guano Company, of the city of New York, party of the second part, as follows: The said party of the first part agrees that the said vessel shall proceed with despatch on a voyage, on the terms and conditions hereinafter mentioned, from the port of Kanagawa, Japan, to Honolulu, Sandwich Islands, for orders, or receipt or discharge of cargo, if required by the party of the second part, or their agent, and thence to Baker's Island, 13′ 30″ N., 176° 22′ 30″ W., situated in the Pacific Ocean, and there load, as hereinafter

mentioned, a cargo of guano for account of the party of the second part, and during the said voyage the said vessel shall be kept tight, staunch, and strong, and in every way well fitted, tackled, and seaworthy, and provided with every requisite, and with men and provisions, necessary and sufficient for such a voyage.

The said party of the first part agrees that the whole of the said vessel, with the exception of the necessary room actually required for the accommodation of her officers and crew, and of her sails, anchors, cables, boats, provisions, water and stores, shall be at the sole use and disposal of the said party of the second part, during the voyage aforesaid; and that no goods, wares or merchandise or weight, except ballast, shall be laden on board, other than such as are or may be shipped by the said party of the second part, or their agent, on pain of forfeiture of the amount of freight-money hereby agreed upon, or to
51 be estimated under this charter-party. The said party of the first part agrees to take and receive on board of said vessel at Honolulu, and provide with cabin accommodations and board, such agent or agents, not exceeding two, of the party of the second part, as they, or their agent, may direct; also, such passengers or laborers in the steerage, not exceeding thirty, which steerage passengers shall be found by the party of the second part, excepting fuel and water, which shall be found by the party of the first part; also, all materials, provisions, wood, water, and specie, together with letters, when delivered alongside of the vessel within reach of her tackles, and deliver them, as per bill of lading, to the agent of the party of the second part, free of any cost to the party of the second part except as herein mentioned.

The said party of the first part agrees that the said vessel shall arrive at said Baker's Island within nine months after date hereof; otherwise this charter-party shall be null and void, at the option of the party of the second part, or their agent; the said party of the first part agrees to conform, and to cause his officers and crew to conform to the rules and regulations established by the American Guano Company for the government of their employees at the said Baker's Island.

The said party of the first part agrees to furnish, at his own cost and expense, all proper dunnage necessary and sufficient for the proper stowage of the cargo, and pay for all damage to the cargo occa-
52 sioned by negligence or improper stowage, or arising from sidelights, or ports, or other openings in top, sides, or decks of the said vessel.

The said party of the first part agrees to give notice, in writing, to the agent of the American Guano Company at said Baker's Island, of the readiness of the vessel to commence to load guano; and the said vessel shall remain at said Baker's Island ten (10) days before having the right to commence to load guano, if required so to remain by the agent of the American Guano Company.

The said party of the second part agrees that the said party of the first part shall have the privilege of mooring said vessel to, and be allowed the free use and benefit of, the buoys or moorings of the American Guano Company at the said Baker's Island.

The said party of the second part agrees that the said vessel shall have a full cargo, and that the guano shall be delivered at the place of loading, Sundays excepted, alongside said vessel, within reach of her tackles, in proper bags or tubs, when the said vessel shall receive in said bags and tubs, and load the said guano on board the vessel at the rate of not less than fifty tons per day, and then return the bags or tubs

empty, alongside of the vessel, to the party delivering the guano, said vessel to commence loading in her regular turn.

The said party of the second part agrees to furnish the bags or barrels in which the guano may be shipped or be discharged, and
53 to furnish the twine for sewing the mouths of the bags, (which filling and sewing shall be done properly by the party of the first part, if required, at the time of delivering the guano.)

The said party of the first part agrees that the said vessel shall be properly and safely loaded, with extra care and diligence, in order to prevent or lessen damage to cargo, and shall not be loaded, in any event, deeper than will allow three (3) inches for every foot of depth of hold between the surface of the water and her upper deck, when loaded, and shall receive a certificate of being properly loaded, according to this charter-party, from the agent of said company, before sailing from the place of loading. And if the said vessel shall proceed to sea improperly loaded and not in conformity to this charter-party, and loss should be sustained by the party of the second part upon cargo, then all such loss shall be taken and deemed to have arisen from, or been caused by, the improper loading of said vessel.

The said party of the first part agrees that should the guano, by any unfor'seen or unavoidable contingencies, not be delivered alongside the vessel, as hereinbefore provided for, then, in such event, and not otherwise, the party of the first part shall, when requested so to do by the agent of the said party of the second part, and only by such request, assist, with a majority of the crew of the said vessel, and her boats, in obtaining and delivering the guano alongside of the vessel, and
54 to receive, in full payment for such service, the usual pay of laborers per day for every day so employed. The said party of the first part agrees to allow, to the said party of the second part, seven running lay-days, Sundays excepted, at Honolulu, and sixty running lay-days at Baker's Island, besides the aforementioned ten days to prepare for loading, such lay-days counting from the time the captain of said vessel gives notice of the readiness of his vessel to load cargo, and for each and every day besides the days specified above that the vessel shall be detained at the above-named ports or places, the cause of such detention, and the number of days so detained by the party of the second part, or their agent, shall be endorsed on this charter-party by the agent of the party of the second part, and paid for at the time of payment of freight-money due under this charter-party, at the rate of one hundred and twenty-five dollars per day, by the party of the second part to the party of the first part, as liquidated damages for such detention.

The said party of the first part agrees, that when the said vessel is properly loaded, her captain shall sign bills of lading, as per chartered rates, which shall be endorsed by the agent of the party of the second part at the places of loading, stating the number of tons of guano or other cargo received and taken on board in good order and condition; and then the said vessel shall proceed on her return passage to Hampton Roads, U. S., for orders, and immediately inform, at New York,
55 by telegram or mail, the party of the second part, or their agent, of her arrival there, where she shall remain, if required by the party of the second part, or their agent, five days, within which time orders shall be sent to her captain directing her port of destination, which shall be New York or Wood's Hole, Mass., where the cargo shall be discharged with all reasonable dispatch, in conformity with this charter-party and bills of lading and the custom of the port, the said

party of the second part, or their agent, to have the right of naming the wharf, or dock, or place, or vessel, at or into which the cargo shall be discharged; providing it be safe, with suitable water.

The said party of the first part agrees to pay all port-charges against the said vessel.

The said party of the second part agrees to pay the freight-money due under and in conformity with the terms and conditions of this charter-party, at the rate of twenty-one dollars and fifty cents ($21.50) for every ton of 2,240 lbs., each ton properly discharged and delivered, and in conformity with this charter-party, in the following modes: One-quarter in cash within ten days after the arrival of the said vessel at her port of discharge, and the balance, three-quarters, in notes of equal amounts, at two, three, and four months' date, satisfactory to the parties of the first part, before delivery of cargo; upon the proper delivery of the cargo, as per charter-party; from the amount of which
56 shall be deducted the pro rata or proper percentage of freight on all guano which may be damaged or wet during the voyage, and also all sums of money for costs, claims, or damages due by the said party of the first part to the said party of the second part or their agent, under the terms and conditions of or in connection with this charter-party, and for which balance of account the party of the first part, or their agent, shall receipt *for* in triplicate, in full payment of all money due under or in connection with this charter-party, stating the number of tons properly weighed and delivered at the port or place of discharge. The said party of the first part agrees that, should any rival claims be made for the freight or other money which may become due by or under this charter-party, then the said freight or other money shall be retained by the party of the second part, or his agent, until the rights of the respective claimants be satisfactorily determined.

It is also further understood and agreed upon by both parties hereto that the said ship shall, if required by the party of the second part, or their agent at Honolulu, receive on board one mooring buoy and anchors and chains, and deliver or lay the said mooring, (or any other mooring which may be delivered alongside of the said vessel) at Baker's Island, under the directions and with the assistance of the agent, and at the risk of the party of the second part, free of any extra charge, providing it is necessary to lay a mooring for the loading of this ship.

57 The said parties of the first and second part do hereby agree, each to the other, to the true and faithful performance of all and each of the foregoing covenants and agreements, and bind themselves, their heirs, executors, administrators and assigns, and also the said vessel, her freight, tackle and appurtenances, and the goods, wares, merchandise or weight, laden on board said vessel, each to the other, in the penal sum of fifty thousand dollars. The acts of God, enemies, wars, fire, pestilence, famine, dangers and perils of the seas, rivers and navigation, and unavoidable accidents and emergencies excepted.

The said vessel, on her arrival at port of discharge, shall be reported and consigned to the address of The American Guano Co.

The charter commission of five per cent. shall be considered due upon the loading and sailing from the island.

In witness whereof the said parties have hereunto interchangeably set their hands this thirteenth day of April, 1867.

SAMUEL G. REED & CO.,
Agents for owners ship Minnehaha.
THE AMERICAN GUANO CO.,
Pr. D. R. STANFORD, *Vice-Prest.*
HOWARD MATHER, *Treasurer.*

Signed and delivered in the presence of—
JOHN PETIT,
For both Parties.

[10¢ stamp.]

58 *Deposition of Charles H. Tyler on behalf of the appellants.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 1st day of March, in the year of our Lord one thousand eight hundred and seventy-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me, Charles H. Tyler, a witness for the appellant in a certain civil cause depending in the circuit court of the United States, in and for the district of Maryland, wherein Samuel G. Reed is appellant and the Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said CHARLES H. TYLER, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellant, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. State your name, age, residence, and occupation.

59 Answer. My name is Charles H. Tyler; I am forty-one years of age; I reside in Boston; I am clerk and confidential agent of Samuel G. Reed, of Boston.

2nd interrogatory. Is the Samuel G. Reed of whom you have just spoken the appellant in this cause?

Answer. He is.

3rd interrogatory. Where does he live?

Answer. Boston, Mass.

4th interrogatory. Do you know who were the owners of the Minnehaha when she was wrecked at Baker's Island? If so, state their names.

Answer. I do. Samuel G. Reed, of Boston, one-half owner; estate of Edward Mott Robinson, of New York, one-half owner.

5th interrogatory. Can you state what was the value of the ship Minnehaha?

Answer. Sixty thousand dollars & upwards.

6th interrogatory. Do you know whether Samuel G. Reed has insurances upon his one-half interest in said vessel; and if so, in what companies, to what amount in each company, and in whose name those insurances were effected?

(Objected to.)

Answer. I know that Samuel G. Reed had insurances upon his one-half interest in said vessel—five thousand in Merchants' Mutual of

Baltimore; five thousand in Maryland Insurance and Security
60 Company of Baltimore; five thousand in United States Fire &
Marine Insurance Company of Baltimore; five thousand in Baltimore Marine Insurance Company; twenty-five hundred in the Insurance Company of the State of Pennsylvania; twenty-five hundred in the Anthracite Insurance Co. of Philadelphia; aggregating twenty-five thousand dollars in all. I know of no other insurances that Mr. Reed had on that vessel. I know that Mr. Reed had no other insurances upon that vessel. These insurances were effected in the name of Samuel G. Reed & Co.

7th interrogatory. State if you know who alone was interested in said insurances, effected in the name of Samuel G. Reed & Co.

Answer. Samuel G. Reed.

8th interrogatory. State who composed the firm of Samuel G. Reed & Co. at the time said insurances were effected, and particularly at the time the insurance was effected between the appellant & appellee in this cause.

Answer. Samuel G. Reed alone composed the firm.

9th interrogatory. State, if you know, which of said insurance companies have been sued by the said Samuel G. Reed for the recovery of the insurance respectively underwritten by them.

(Objected to as irrelevant.)

Answer. The United States Fire and Marine of Baltimore, and the Insurance Company of the State of Pennsylvania. They were
61 both sued in New York. The Merchants' Mutual, the Maryland Security, and the Baltimore Marine, all of Baltimore.

10th interrogatory. State when the suits against the United States Fire and Marine Insurance Company and the Insurance Company of the State of Pennsylvania were instituted in New York.

(Objected to.)

Answer. I think in the latter part of 1868.

11th interrogatory. Do you know the result of said suits instituted in New York?

(Objected to.)

Answer. Mr. Reed has obtained judgment, which was appealed from and affirmed by a higher court, and the case is again appealed against the Insurance Company of the State of Penna. The United States Fire and Marine Insurance Company of Baltimore, subsequent to bringing the suit in N. York, failed, passed into the hands of a receiver, who allowed a settlement of Mr. Reed's claim, and gave him a certificate therefore, on which the regular dividends allowed by the receiver was received. The certificate was for $6,000.

12th interrogatory. What was done with the Anthracite Insurance Company?

(Objected to.)

Answer. The Anthracite Insurance Company made a compromise settlement of their claim without any suit, about one year ago.

62 13th interrogatory. State if you know whether the exception in the risk taken by the United States Fire Marine Insurance Company, the Insurance Company of the State of Pennsylvania, and the Anthracite Insurance Company, in reference to Baker's Island, was identical in words with the insurance effected by this appellant with the appellee.

(Objected to.)

Answer. It was.

14th interrogatory. State, if you know, whether the appellee in this

case was cognizant of the said suits and their prosecution in New York, and whether they were to abide by the decision of those cases in the settlement of their risk.

(Objected to.)

Answer. I went to New York for Mr. Reed, and commenced those two suits against the Insurance Company of the State of Pennsylvania and the United States Fire and Marine Insurance Co. of Baltimore. I was able to bring action by finding funds there belonging to those companies. I employed Messrs. Beebe, Donohue & Cook, and subsequently ascertained that Mr. W. D. Booth appeared as counsel for the insurance companies. I called upon him, after ascertaining that he was counsel, talked with him in regard to suing the rest of the Baltimore companies. He seemed to think there was no need for it, and thought that they would abide by the decision of those cases which were already com-
63 menced. I repeated that to Mr. Reed. Mr. Booth also stated that he had always acted for the Baltimore companies, or most of them, and he thought they would abide by the decision of those cases. The Baltimore cases were not sued at that time by Mr. Reed. I always believed the statements made by Mr. Booth influenced him, Mr. Reed, not to commence too many suits of one kind, when the same question was involved in each one.

(Answer objected to.)

15th interrogatory. Do you or do you not know of your own knowledge whether this conversation between you and Mr. Booth, and reported by you to Mr. Reed, influenced Mr. Reed at that time, in not bringing suits against the other Baltimore companies?

(Objected to.)

Answer. I think it did so influence him. He said it was useless to bring unnecessary lawsuits, and that he had better wait awhile.

16th interrogatory. State when, if ever, you came to Baltimore with Mr. Booth, and presented to the appellee in this case preliminary proof of loss of the Minnehaha, of Mr. Reed's interest therein, and of adjustment.

Answer. I did in the fall of 1871; I think, September.

17th interrogatory. What was said at that time by the appellee in reference thereto?

Answer. They declined to receive proofs of loss, or any of the
64 papers of abandonment of Mr. Reed's interest in the vessel. They objected very loudly and strongly to the manner used by the former clerk of Mr. Reed in N. York—Mr. Gannett—which they told us was very insulting to the companies in Baltimore.

18th interrogatory. Look upon Exhibit C, and say whether it is one of the papers that you presented at said time to the appellee as part of your preliminary proof, and which it refused to receive.

Answer. It is.

19th interrogatory. State whether the premium note, given for the insurance effected by the appellant with the appellee, has been paid.

Answer. I think it has.

20th interrogatory. State whether, during the progress of the suit between the appellant and appellee, in the district court of the United States, Maryland dist., last summer, you had any conversation with Mr. George B. Coale, the president of the appellee, in relation to the merits of the said suit; and, if so, what was said by him?

(Objected to.)

Answer. During the trial of the case in the district court in Baltimore, at a recess, I met Mr. Coale, and he said to me, that if I could

assure him that we believed the insurance made by his company attached at the island, he thought he would be willing to pay it then.

Mr. Coale afterwards, in the court-room, told me that he did not
65 believe we thought the policy attached at any time the vessel laid at the island. This was the part of the above conversation which commenced in the street and ended in the court-room.

21st interrogatory. What was your reply to him?

(Objected to.)

Answer. I replied, as I had before told him, when he called at Mr. Reed's office in Boston, that we tried to insure the whole risk clean; failing that, we got as near to a clean policy as we could.

Cross-examined:

1st cross-interrogatory. Is Mr. Wm. D. Booth, of whom you have spoken in your answer to the 14th interrogatory-in-chief, the same gentleman with whom you afterward called on Mr. Coale, as testified to by you in answer to the 16th int.?

Answer. He is.

2nd cross-interrogatory. Is he the gentleman who is acting as proctor for the libellants in this cause?

Answer. He is.

3rd cross-interrogatory. Was Mr. Gannett, in the month of March, 1868, of whom you spoke, the New York representative or agent of the house of Samuel G. Reed & Co.?

Answer. He was clerk.

4th cross-interrogatory. Who was over him as representative of the house of Samuel G. Reed & Co. in New York?

Answer. Samuel G. Reed.

66 5th cross-interrogatory. Where did Samuel G. Reed then live?

Answer. In Boston.

6th cross-interrogatory. How did he, living in Boston, control or superintend the action of Mr. Gannett in New York?

Answer. By letters and by telegrams.

7th cross-interrogatory. Did Mr. Gannett communicate to him everything that he did in N. York, as the representative of the house?

(Excepted to.)

Answer. He must have so done, as he had no power to act.

8th cross-interrogatory. Was not the business carried on in N. York under the name of Samuel G. Reed & Co.? Did not the house have an office and do business under that name in that city?

Answer. There was a nominal or small business carried on in New York under that name; they had an office and a sign.

9th cross-interrogatory. Who was the only representative of that firm in the city of New York in November, 1868?

Answer. Mr. Gannett was employed by Samuel G. Reed in Boston, to go to New York and act as clerk for Samuel G. Reed & Co., Mr. Gannett being a Boston man.

10th cross-interrogatory. Do you know the handwriting of W.
67 W. Gannett, who has been referred to in your examination-in-chief and cross-examination?

Answer. I do.

11th cross-interrogatory. Please look at the letter, dated March 9th, 1868, and marked Exhibit No. 1, purporting to be signed Samuel G. Reed & Co., per W. W. Gannett, atty., and state whether or not said letter and the signature thereto are in his handwriting.

(Objected to.)

Answer. It is the handwriting of Mr. Gannett.

12th cross-interrogatory. Was he not at that time in the habit of signing letters in reference to the business of Samuel G. Reed & Co., as the one just referred to is signed, and was it not known to Mr. Reed that he was in the habit of so doing?

Answer. He was not in the habit of signing the name of Samuel G. Reed & Co. as attorney, and to my knowledge he had no authority to sign, as attorney, any letters. I don't believe Mr. Reed ever knew of such thing.

13th cross-interrogatory. When you called on Mr. Coale, in company with Mr. Booth, did he not tell you and Mr. Booth that he had in 1868 refused to recognize the liability of his company, the appellee, for the alleged loss; and did he not read to you, from his *little*-book, a copy of a letter addressed to Samuel G. Reed & Co. to that effect?

68 Answer. I don't remember that. He spoke of Mr. Gannett's being there. I don't think the date was referred to. He denied the liability of his office, and commented very severely upon Mr. Gannett's manner when he was there, as being extremely insulting to the companies, by telling them that the policies were made in that way at the time they were taken out for the purpose of trapping them, and that he did not think that the appellees understood their business. The whole conversation, so far as I remember, was general as regards Mr. Gannett.

14th cross-interrogatory. Please state whether or not you had a conversation in Boston with Mr. Coale, the agent of the appellee, in reference to the subject of the present suit; if yea, when and what such conversation was.

(Objected to.)

Answer. I think in the summer of 1868 Mr. Coale called at Mr. Reed's office in Boston, Mr. Reed being sick. He was a stranger to me. Mr. Coale introduced himself, and said he wished to ask me one question, and would I answer it; that question was, "Did Mr. Reed intend, when he obtained those policies, to cover that risk at Baker's Island?" I replied that he intended to cover the whole voyage entire and complete; failing that, he got as near to it as he could. Mr. Coale then said, "That is all," and left.

69 15th cross-interrogatory. What was the date of your conversation with Mr. Booth in New York, referred to in your answer to the 14th interrogatory-in-chief, in which you spoke of Samuel G. Reed & Co. suing the appellee and other Baltimore companies?

Answer. I can't now give you that date. I can't say whether it was 1868 or 1869.

16th cross-interrogatory. Had not the appellee and the other Baltimore companies, before that time, denied their liability for the loss in question?

Answer. I can't remember the time; it was four or five years ago.

17th cross-interrogatory. By whose direction did you have the conversation with Mr. Booth?

Answer. By the direction of Samuel G. Reed.

18th cross-interrogatory. Did Mr. Reed tell you at the time of giving such direction that the appellee and the other Baltimore companies had denied their liability for the loss in question, and refused to pay?

(Objected to.)

Answer. I don't remember.

19th cross-interrogatory. Did he give you no reason for wishing then to institute suit against the appellee and the other Baltimore companies?

Answer. I don't think he gave me any reason. Mr. Reed sent me to New York to see if I could find any funds in N. York belonging to these companies; and, if so, to attach and sue in New York. I went to
70 New York; found securities belonging to the United States Fire and Marine Insurance Company of Baltimore, and the Insurance Company of the State of Pennsylvania, and instituted suit against them.

The witness here says: In my answer to the 16th cross-interrogatory are these words, "It was four or five years ago." I don't remember saying these words. All I intend as answer to the 16th cross-interrogatory is, "I don't remember the time."

Signing waived by consent of the respective proctors.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of Charles H. Tyler is consent of the respective proctors; and I do also certify that Mr. McClure appeared on behalf of the appellant, and Mr. John H. Thomas on behalf of the appellee.

And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence; and I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

71 Given under my hand and seal, at the city of Baltimore, within the district of Maryland, this 1st day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[COMMR.'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

The exhibits referred to in the foregoing deposition are as follows, to wit:

EXHIBIT C.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk County, ss:

On this twenty-fifth day of September, A. D. 1871, before me, a notary public of the Commonwealth of Massachusetts, residing in the city of Boston and county of Suffolk, personally appeared Samuel G. Reed, to me known, who, being by me duly sworn, deposes and says:

That he was the sole owner of the one undivided half part of the ship Minnehaha at the time of her loss at Baker's Island, in December, 1867, and was and is solely interested in the insurances thereon effected in the name of Samuel G. Reed & Co., for the account of whom it may concern.

That such insurances, and the only insurances on said interest, were and are as follows:

72

The Merchants' Mut'l Ins. Co. of Baltimore	$5,000
The Maryland Security Ins. Co. of "	5,000
The Baltimore Marine Ins. Co. " "	5,000
The United States Fire & Marine Ins. Co., "	5,000
The Insurance Co. of State of Penn'a, of Phil'a	2,500
The Anthracite Ins. Co. " "	2,500

And that in each of said policies the valuation of the said ship Minnehaha was and is fixed at sixty thousand dollars.

SAM'L G. REED.

{NOTARY PUBLIC'S SEAL.} DANIEL SHARP,
Notary Public.

EXHIBIT No. 1.

NEW YORK, *March* 9, 1868.

To ALLEN A. CHAPMAN, Esq.,
Pres't Merchants' Mut'l Ins. Co.:

DEAR SIR: Capt. Bursby, of the late ship Minnehaha, has just arrived here, and it appears by his protest that the ship had not commenced loading at the time she was driven ashore & lost. It follows that said ship was at the risk of your company so far as she was covered by policy No. 3985, and we hereby abandon her to your company and claim payment of a total loss.

73 Yours, respectfully,

SAM'L G. REED & CO.,
Per W. W. GANNETT, *Atty.*

Depositions of witnesses on the part of appellee.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to Mord Lewis, esquire, greeting:

[SEAL OF CT. COURT U. S.] Be it known that you are appointed commissioner to examine witnesses in a cause depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, between Samuel G. Reed, appellant, and Merchants' Mutual Insurance Company of Baltimore, appellee. Therefore, you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient you cause to come before you all such witnesses as shall be named or produced to you be either the appellant or appellee, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or

74 remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said circuit court, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief-Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and seventy-two.

Issued the 4th day of March, 1873.

JAMES W. CHEW,
Clerk Circuit Court.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties: so help you God.

MORD LEWIS.

The above oath was administered to Mord Lewis by me this 11th day of March, 1873.

WILLESBY W. GAGE,
Commr. of Deeds.

Answer. I don't think he gave me any reason. Mr. Reed sent me to New York to see if I could find any funds in N. York belonging to these companies; and, if so, to attach and sue in New York. I went to
70 New York; found securities belonging to the United States Fire and Marine Insurance Company of Baltimore, and the Insurance Company of the State of Pennsylvania, and instituted suit against them.

The witness here says: In my answer to the 16th cross-interrogatory are these words, "It was four or five years ago." I don't remember saying these words. All I intend as answer to the 16th cross-interrogatory is, "I don't remember the time."

Signing waived by consent of the respective proctors.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of Charles H. Tyler is consent of the respective proctors; and I do also certify that Mr. McClure appeared on behalf of the appellant, and Mr. John H. Thomas on behalf of the appellee.

And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence; and I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

71 Given under my hand and seal, at the city of Baltimore, within the district of Maryland, this 1st day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[COMMR.'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

The exhibits referred to in the foregoing deposition are as follows, to wit:

EXHIBIT C.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk County, ss:

On this twenty-fifth day of September, A. D. 1871, before me, a notary public of the Commonwealth of Massachusetts, residing in the city of Boston and county of Suffolk, personally appeared Samuel G. Reed, to me known, who, being by me duly sworn, deposes and says:

That he was the sole owner of the one undivided half part of the ship Minnehaha at the time of her loss at Baker's Island, in December, 1867, and was and is solely interested in the insurances thereon effected in the name of Samuel G. Reed & Co., for the account of whom it may concern.

That such insurances, and the only insurances on said interest, were and are as follows:

72

The Merchants' Mut'l Ins. Co. of Baltimore	$5,000
The Maryland Security Ins. Co. of "	5,000
The Baltimore Marine Ins. Co. " "	5,000
The United States Fire & Marine Ins. Co., "	5,000
The Insurance Co. of State of Penn'a, of Phil'a	2,500
The Anthracite Ins. Co. " "	2,500

And that in each of said policies the valuation of the said ship Minnehaha was and is fixed at sixty thousand dollars.

SAM'L G. REED.

{NOTARY PUBLIC'S SEAL.} DANIEL SHARP,
Notary Public.

EXHIBIT No. 1.

NEW YORK, *March* 9, 1868.

To ALLEN A. CHAPMAN, Esq.,
Pres't Merchants' Mut'l Ins. Co.:

DEAR SIR: Capt. Bursby, of the late ship Minnehaha, has just arrived here, and it appears by his protest that the ship had not commenced loading at the time she was driven ashore & lost. It follows that said ship was at the risk of your company so far as she was covered by policy No. 3985, and we hereby abandon her to your company and claim payment of a total loss.

73 Yours, respectfully,

SAM'L G. REED & CO.,
Per W. W. GANNETT, *Atty.*

Depositions of witnesses on the part of appellee.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to Mord Lewis, esquire, greeting:

[SEAL OF CT. COURT U. S.] Be it known that you are appointed commissioner to examine witnesses in a cause depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, between Samuel G. Reed, appellant, and Merchants' Mutual Insurance Company of Baltimore, appellee. Therefore, you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient you cause to come before you all such witnesses as shall be named or produced to you be either the appellant or appellee, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or

74 remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said circuit court, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief-Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and seventy-two.

Issued the 4th day of March, 1873.

JAMES W. CHEW,
Clerk Circuit Court.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties: so help you God.

MORD LEWIS.

The above oath was administered to Mord Lewis by me this 11th day of March, 1873.

WILLESBY W. GAGE,
Commr. of Deeds.

75 *Clerk's oath.*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioner named in the commission hereunto annexed, so far forth as you are directed and employed by the said commissioner to take, write down, and transcribe the said depositions or any of them: so help you God.

In the circuit court of the United States for the fourth circuit.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY of Baltimore.

Appeal from the district court for the district of Maryland.

Interrogatories to be addressed on behalf of the appellee to Henry W. Johnson, A. Foster Higgins, William Krebs, Richard A. Tooker, & any or either of them, witnesses in the city & State of New York.

1. Please state your age, residence, & occupation, & what was your occupation, or of what firm you were a member, on the 6th day of January, 1868, & during the balance of that year.

2. Please state whether or not on or about the 6th day of January, 1868, you applied to the appellee for an insurance in the name of
76 Samuel G. Reed & Co. on the ship Minnehaha; if yea, state by whose direction such application was made; file said application, if in writing, with your answer; state whether it was made in person or by letter; and if by letter, file said letter also with your answer.

3. State anything else you may know of advantage to the appellee.

WALLIS & THOMAS,
Proctors for Appellee.

True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

Interrogatories to be addressed on behalf of the appellee to Charles Dennis, a witness in the city and State of New York.

1. Please state your age, residence, & occupation; whether or not you are an officer of the Atlantic Mutual Insurance Company; if yea, state position you held in said company & how long you have held the same.

2. Please state whether or not said company ever insured the ship Minnehaha or any interest therein for a voyage from Honolulu via Baker's Island to a port of discharge in the United States; if yea, please state when such insurance was made, & file the policy by which it was made, if you can; if not, state why you cannot.

77 3. Please state whether there is any other insurance company in New York or elsewhere in the United States, so far as you know, known as or called The Atlantic.

4. Please state anything else you may know of advantage to the appellee.

WALLIS & THOMAS,
Proctors for Appellee.

True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

Cross-interrogatory to be propounded to Henry W. Johnson, A. Foster Higgins, William Krebs, Richard A. Tooker, or either or any of them who may be examined in chief.

In stating, in answer to the 3rd interrogatory, anything else you may know of advantage to the appellee, be good enough to also state anything you may know of advantage to the appellant.

The appellant propounds to the said Charles Dennis, esq., the following cross-interrogatory:

Be good enough to also state, in answer to the appellee's 4th interrogatory, anything you may know to the advantage of the appellant.

J. A. L. McCLURE,
Proctor Appellant.

78 True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

In the circuit court of the United States for the fourth circuit.

SAMUEL G. REED
agst.
MERCHANTS' MUTUAL INSURANCE COMPANY of Baltimore.

Appeal from the district court for the district of Maryland.

At the execution of a commission issued out of the circuit court of the United States for the fourth circuit, the fourth day of March, in the year 1873, directed to Mord Lewis, empowering him to examine witnesses in a case pending in said court, between Samuel G. Reed, plaintiff, and the Merchants' Mutual Insurance Company of Baltimore, defendants, I, Mord Lewis, the commissioner in the said commission named, by virtue thereof having met this 18th day of March, in the year of our Lord eighteen hundred and seventy-three, at No. 51 Wall street, in the city of New York, State of New York, and having taken the oath to the said commission annexed, proceeded to take the following depositions, to wit:

CHARLES DENNIS being first duly sworn in due form of law:

To the first interrogatory on the part of the appellee he deposeth and saith: I am fifty-two years of age, and reside in the city
79 of Brooklyn, and am a marine underwriter; I am an officer of the Atlantic Mutual Insurance Company; am its vice-president, and have been so for about twenty years.

To the second interrogatory on the part of the appellee he deposeth and saith: Yes; we made the insurance on the 19th day of December, 1867, and I herewith file a copy, marked "Exhibit A," of the policy, as taken from the books of the company. I cannot file the original policy, as that is the property of the assured, who I suppose hold the same.

To the third interrogatory on the part of the appellee he deposeth and saith: There is the Atlantic, a fire-insurance company of the city of New York, and the Atlantic, a life-insurance company of the city of Albany. These are the only ones I know of that name.

To the fourth interrogatory on the part of the appellee he deposeth and saith: I don't know anything else of advantage to the appellee.

Cross-examination:

To the first interrogatory on the part of the appellant he deposeth and saith: I do not know of anything of advantage to the appellant.

CHARLES DENNIS.

80 Sworn to & subscribed before me this 18th day of March, 1878.

MORD LEWIS,
Commissioner.

The exhibit referred to in the foregoing deposition is as follows, to wit:

(Copy.)

EXHIBIT A.

(10 vessel.) By the Atlantic Mutual Insurance Company. (No. 16948.)

160,488. H. A. Barling & A. H. Davis, ex't'rs, on account of whom it may concern, in case of loss, to be paid in funds current in the city of New York, to them do make insurance, and cause to be insured, lost or not lost, at and from Honolulu to Baker's Island, and at & thence to a port in the United States not east of Boston, with liberty to call at Hampton Roads for orders.

It is understood and agreed that the risk is to be suspended from the date of her arrival off Baker's Island, and until the vessel shall have sailed, taken her departure, and obtained a good offing from the island.

Warranted by the assured not to use any of the guano islands, nor to load petroleum-oils in barrels, or lime under deck. Upon the body, tackle, apparel, and other furniture of the good ship called the Minnehaha, whereof is [master for this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof,

Sum insured, $30,000.

81 is or shall be named or called, beginning the adventure upon the said vessel, tackle, apparel, &c., at and from as aforesaid, and so shall continue and endure until the said vessel be safely arrived at , as aforesaid, and until she be moored twenty and four hours in good safety. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said vessel, tackle, &c., hereby insured, are valued at sixty thousand dollars.

Without any further account to be given by the assured to the assurers, or any of them, for the same.

Touching the adventures and perils which the said Atlantic Mutual Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured—factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel, or any part thereof, without prejudice to

82 this insurance; to the charges whereof the said insurance com-

pany will contribute according to the rate and quantity of the sum herein insured; nor shall the acts of the insured or insurer, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; having been paid the consideration for this insurance, by the assured or assigns, at and after the rate of seven pr. ct., to return one-half pr. ct. if the risk be to a port within Chesapeake Bay, or the Chesapeake Bay be not used, and no loss or contribution be claimed, or to return five pr. ct. if the vessel be lost at Baker's Island, while the risk under this policy is suspended, and this company not liable for loss.

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said (the amount of the note given for the premium, if unpaid, being first deducted,) but no partial loss or particular average shall in any case be paid, unless amounting to five per cent. Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in day of date to this policy, then the said Atlantic Mutual Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully cover ng the premises hereby assured; and the said Atlantic Mutual Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in day of date to this policy, the said Atlantic Mutual Insurance Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said Atlantic Mutual Insurance Company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. And it is further agreed that in case a total loss shall be claimed for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value shall be her valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk at the port to which she then belonged. And, lastly, it is agreed, that if the above vessel, upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this policy.

Proof of loss to be authenticated by the agent of the company, if there be one at the place such proofs are taken.

83

84

Warranted not to abandon in case of capture, seizure, or detention until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to this company. Also, warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

In witness whereof the president or vice-president of the said Atlantic

Mutual Insurance Company hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their secretary, in New York, the 19th day of December, one thousand eight hundred and sixty-seven. If the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$30,000, (thirty thousand dollars.)

(Upon the margin of the foregoing policy of insurance is printed, in red ink, the following, to wit:)

85 Warranted by the assured that the vessel be commanded by a captain holding a certificate from the American Shipmasters' Association.

In case of claim for loss or damage, a deduction of one-third from the cost of repairing or replacing the same shall be made, after deducting the value of the old materials, except in the case of anchors and of sheathing of copper or other metal; a deduction of one-fortieth from the expense of repairing or replacing the metal sheathing, or any part thereof, (after first deducting the value of the old metal and nails,) shall be made for every month since the vessel was last sheathed until the expiration of forty months, after which time the cost of remetaling or repairing the same shall be wholly borne by the assured. If a technical total loss be claimed, similar deductions shall be made from the estimated repairs, and unless the nett cost thereof would exceed a moiety of the value of the vessel, after making such deductions, the loss shall be deemed partial only.

Premium . . $2,100
Policy 1 25
$2,101 25

Warranted by the assured free from claim on account of capture, seizure, detention, or destruction by or arising from any belligerent nation, or by or from any officer, civil or military, or other person claiming to act in their name or under their authority or in their behalf.

Warranted by the assured that vessels to be loaded with grain from the ports of New York, Philadelphia, or Baltimore, for foreign ports, are to loaded under the inspection of the surveyor of the
86 board of underwriters, and his certificate as to their proper loading and seaworthiness obtained.

(Endorsed:)

This is the paper referred to by Charles Dennis in his examination as the paper marked "Exhibit."

MORD LEWIS,
Commissioner.

This is the paper referred to by Charles Dennis in his re-examination as the paper marked "Exhibit A."

MORD LEWIS,
Commissioner.

(Copy.) 19th Decr., 1867.—Atlantic Mutual Insurance Company.

H. A. Barling and A. H. Davis, extrs.

Honolulu, &c., to United States. Vessel—Ship Minnehaha—$30,000 @ 7 per cent., $2,100; policy, 1.25 —$2,101.25. Record 18, folio 122.

March 4th, 1868.—Pay five pr. ct. return-premium under the within insurance, the vessel having been lost at Baker's Island, while the insurance was suspended, and this Co. not liable for loss, and cancel this policy. Return-premium, $1,500.

RICHARD A. TOOKER, being first duly sworn in due form of law.

To the first interrogatory on the part of the appellee he deposeth and saith: I am fifty-six years of age. I reside in New York City. I was a clerk of Johnson & Higgins, insurance-brokers, during the entire year 1868.

87 To the second interrogatory on the part of the appellee he deposeth and saith: I made, on behalf of Johnson and Higgins, for Samuel G. Reed & Co., an application for insurance on the "Minnehaha" to the appellee. Exhibit marked "B," and filed, is the application. Application was made by direction of Mr. Grimes, a partner of, or acting by authority of, Samuel G. Reed and Company. The letter herewith filed, marked Exhibit "C," was sent with the application.

To the third interrogatory on behalf of the appellee he deposeth and saith: I don't know anything further of advantage to the appellee.

Cross-examination:

To the first interrogatory on the part of the appellants he deposeth and saith: I do not know anything further of advantage to the appellant.

RICHD. A. TOOKER.

Subscribed & sworn to before me this 18th day of March, 1873.

MORD LEWIS,
Commissioner.

In witness whereof I have hereunto set my hand and seal this 18th day of March, 1873.

MORD LEWIS, [SEAL.]
Commissioner.

88 The exhibits referred to in the foregoing deposition are as follows, to wit:

EXHIBIT B.

[JOHNSON & HIGGINS,
Bureau of Insurance, 89 *Wall St.*]

Application for insurance is hereby made by Johnson & Higgins, as agents in name of Saml. G. Reed & Co., account of whom it may concern. Loss, if any, payable to them or order. For on ship Minnehaha. Liberty valued at $60,000. Per . At and from Honolulu, via Baker's Island, to a port of discharge in the United States not east of Boston, with liberty to use Hampton Roads for orders; the risk to be suspended while vessel is at Baker's Island loading.

Waiving Shipmasters' Association clause. Premium, per cent.

New York, Jany. 6, 1868.

President.

NOTE.—Policy to be sent to Johnson & Higgins, 89 Wall street.

(In lead-pencil.) JOHNSON & HIGGINS, *Applicant*,
Per TOOKER.

$5,000 each Co. at 7 % net.

(Endorsed:)

This is the paper referred to by Richard A. Tooker in his examination as the paper marked "Exhibit B."

MORD LEWIS,
Commissioner.

89 This is the paper referred to by Richard A. Tooker in his re-examination as the paper marked "Exhibit B."

MORD LEWIS,
Commissioner.

EXHIBIT C.

OFFICES OF JOHNSON & HIGGINS, AVERAGE ADJUSTERS AND INSURANCE BROKERS,
Nos. 87 *and* 89 *Wall St., New York, Jany.* 6, 1868.

GEO. B. COALE, Esq., *Sec'y:*

DR. SIR: Enclosed please find 2 applications for Saml. G. Reed & Co. viz, one on the Minnehaha. Our co's here are averse to Baker's Island risks, & for that reason the owners suspend the risk while at Baker's Island loading.

The Atlantic have taken a large line on vessel and freight @ 7 % with scrip.

Also one in the Guiding Star now loading under inspection of Capts. Ellis & Story for underwriters.

Please let us know how much your co's will take on each & the lowest respective rates.

Should like to hear by telegraph.

Yours, resp'y,

JOHNSON & HIGGINS,
Per TOOKER.

90 Your action as to steamer Mary rather surprises us. However, we shall have to get used to it, in hope you don't intend to let the habit become chronic.

(Endorsed:)

This is the paper referred to by Richard A. Tooker in his examination as the paper marked "Exhibit C."

MORD LEWIS,
Commissioner.

This is the paper referred to by Richard A. Tooker in his re-examination as the paper marked "Exhibit C."

MORD LEWIS,
Commissioner.

In the circuit court of the United States for the fourth circuit.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY.

To the honorable Hugh Lennox Bond, judge of the circuit court of the United States for the fourth circuit:

The petition of the appellee respectfully represents that the appellant has filed exceptions to the execution & return of the commission issued to Mord Lewis, esq., on the fourth day of March, 1873. Your petitioner therefore prays that said commission be remanded to said commissioner for the purpose of executing and returning the same anew, if necessary, or of otherwise correcting any formal error, if there be any in the execution & return thereof.

WALLIS & THOMAS,
Proctors for Appellee.

91 Ordered, this 19th of June, 1873, that the above commission be remanded, and that the commissioner be directed to re-execute the same before a proper person qualified to administer the oath to be taken by him, and that he re-examine witnesses and return the said commission as soon as may be to this court.

HUGH L. BOND,
Ct. Judge.

JUNE 19, 1873.

It is hereby agreed that either the appellant or appellee may file additional interrogatories or cross-interrogatories to be propounded to the witnesses to be re-examined under said commission.

J. A. L. McCLURE,
Proctor for Appellant.
WALLIS & THOMAS,
Proctors for Appellee.

In U. S. circuit court, Md. district, April term, '73.

SAML. G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY. } On appeal. In admiralty.

Additional cross-interrogatory to be propounded to Richard A. Tooker:

Have you in your possession a certain letter dated 14th April, 1873, written by George B. Coale to you, or to Johnson & Higgins? If
92 so, annex the same to your answer hereto, or if said letter is not now in your possession, state where it now is, and when you last saw it. Please also state to what letter, if any, such letter of April 14, 1873, was in reply, and if you have such other letter in your possession, or a copy thereof, (to which said letter of April 14, 1873, was in reply,) annex the same to your answer hereto.

J. A. L. McCLURE,
Proctor for Appellant.

True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

The appellee objects to the above interrogatory, because the correspondence therein referred to having taken place, if at all, after the rights of the respective parties to this cause & to the others dependent thereon had become fixed, and post litem mortam is not admissable in evidence unless it tended to contradict some testimony of one or the other of the writers of one or the other of said letters.

WALLIS & THOMAS,
Proctors for Appellees.

True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

Additional interrogatories to be propounded on behalf of the appellee to Richard A. Tooker, esq., under the commission remanded to Mord Lewis, esq.

93 1. A. I. Under the commission heretofore issued to & executed by Mord Lewis, esquire, the following question was asked

you, viz, "Please state whether, after the policy of the appellee, founded on the application heretofore filed with your testimony, was made by the applicant, or any person representing him, applied to any other insurance company to insure his interest or that of S. G. Reed & Company in the ship Minnehaha, from the arrival of the ship at Baker's Island till her departure thence, as the period not intended to be covered by the policy of the appellee; state all you know in reference thereto;" to which you replied, "No other application was made in any other form than the application filed with my former testimony." Please state now whether you understood or misunderstood said question at the time of giving the above-mentioned answer thereto. If you misunderstood said question, or your memory has since been refreshed in reference thereto, please now answer said question anew, fully.

2. A. I. Please state whether you or any one representing the appellant inquired of any insurance company whether it would issue a policy covering the interest of the appellant or that of Samuel Reed & Company in the ship Minnehaha, while at Baker's Island, on her voyage from Honolulu to the United States. If yea, when, and why did you make such inquiry?

WALLIS & THOMAS,
Proctors for Appellee.

94 The appellant objectsto the above additional interrogatories be' propounded to the witness Richard A. Tooker, because they have heretofore been asked him & answered in the 2nd commission issued in said case to Mord Lewis, esq., and for other reasons hereafter to be assigned when the case is heard at bar.

J. A. L. McCLURE,
Proctor for Appellants.

True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

Additional interrogatory to R. A. Tooker.

3. A. I. Please file with your answer to the interrogatories on behalf of the appellee, the letter from George B. Coale, dated 11th April, 1873, referred to in your letter to him dated 12th April, 1873.

WALLIS & THOMAS,
Atty's for Appellee.

The appellant objects to the filing of said letter of the 11th April' 1873, as evidence in the cause, because he has not referred to it, or called for it in his cross-interrogatories; and for the further reason that any statements which Mr. George B. Coale may make in said letter, or otherwise, are not evidence unless to contradict or impeach him
95 as a witness heretofore examined, or unless made against the interest of the appellee, said letter being no part of the res gestæ.

J. A. L. McCLURE,
Proctor for Appellant.

True copy—test:

JAMES W. CHEW,
Clerk Circuit Court.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly,

faithfully, and without partiality to any one or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereto annexed, and of the order of the circuit court of the United States, &c., dated June 19, 1873, also hereto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you, by either of the said parties: so help you God.

MORD LEWIS.

The above oath was administered to Mord Lewis by me this 25th day of June, 1873.

[SEAL.] ALBERT H. BANCKER,
Notary Public.

96 In the circuit court of the United States for the fourth circuit.

SAMUEL G. REED
agst.
MERCHANTS' MUTUAL INSURANCE COMPANY, of Baltimore.

Appeal from the district court for the district of Maryland.

At the execution of a commission issued out of the circuit court o the United States for the fourth circuit, the fourth day of March, 1873, directed to Mord Lewis, empowering him to examine witnesses in a case pending in said court between Samuel G. Reed, plaintiff, and the Merchants' Mutual Insurance Company, of Baltimore, defendants; I, Mord Lewis, the commissioner in the said commission named, by virtue thereof, and by virtue of the order of Hon. Hugh L. Bond, circuit judge, made and entered the 19th day of June, 1873, hereto annexed, met this 26th day of June, in the year of our Lord eighteen hundred and seventy-three, at No. 51 Wall street, in the city of New York, State of New York, and having taken the oath to the said commission annexed, proceeded to take the following depositions, to wit:

CHARLES DENNIS, being first duly sworn, in due form of law, on the Holy Evangely of Almighty God, as required by commission—

97 To the first interrogatory on the part of the appellee he deposeth and saith: I am fifty-two years of age, and reside in the city of Brooklyn, State of New York. My occupation is that of a marine underwriter. I am an officer of the Atlantic Mutual Insurance Company. I am its vice-president, and have been so for about twenty years.

To the second interrogatory on the part of the appellee he deposeth and saith: Yes. We made the insurance on the 19th day of December, 1867. The only risk taken by the company on any interest in the Minnehaha or her freight was by a policy, of which a copy is hereto annexed, marked "Exhibit A." I cannot file the original, as it is not in my possession.

To the third interrogatory on the part of the appellee he deposeth and saith: There is the Atlantic, a fire-insure company of New York City, and the Atlantic, a life-insurance company of the city of Albany, State of New York. These are the only ones I know of by that name.

To the fourth interrogatory on the part of the appellee he deposeth and saith: I don't know anything else of advantage to the appellee.

Cross-examination:

98 To the first interrogatory on the part of the appellant he deposeth and saith: I do not know anything of advantage to the appellant.

CHARLES DENNIS.

Subscribed and sworn to before me this 26th day of June, 1873.

MORD LEWIS,
Commissioner, New York.

MORD LEWIS,
Commissioner.

RICHARD A. TOOKER, being first duly sworn, in due form of law, on the Holy Evangely of Almighty God, as required by the commission—

To the first interrogatory on the part of the appellee he deposeth and saith: I am fifty-six years of age. I reside in the city of New York. I was a clerk of Johnson & Higgins, insurance brokers, during the entire year 1868.

To the second interrogatory on the part of the appellee he deposeth and saith: I made on behalf of Messrs. Johnson & Higgins, for Samuel G. Reed & Co., an application for insurance on the Minnehaha to the appellee. The exhibit filed and marked "Exhibit B" is the application. The application was made by direction of Mr. Gannett, acting by authority of Samuel G. Reed and Company. I wish to correct my
99 former answer to this question in which I said that it was Mr. Grimes. I found out that it was not Mr. Grimes, but Mr. Gannett called to see me. They are much alike in personal appearance, and so arose the mistake. The letter herewith filed, marked "Exhibit C," was sent with the application.

To the third interrogatory on the part of the appellee he deposeth and saith: I don't know anything further of advantage to the appellee.

Cross-examination:

To the first interrogatory on the part of the appellants he deposeth and saith: I do not know anything further of advantage to the appellant.

RICHARD A. TOOKER.

Subscribed and sworn to before me this 26th day of June, 1873.

MORD LEWIS,
Commissioner.

Additional interrogatories.

To the first additional interrogatory on the part of the appellee he deposeth and saith: I misunderstood the question referred to when first propounded to me by Mord Lewis, esq., commissioner, upon
100 a former commission. My answer now is that I was requested to ascertain at what rate I could insure the vessel at & from her arrival at Baker's Island until completion of her loading, and actually made propositions to this effect to some insurance companies, but which companies they were I cannot now remember.

To the second additional interrogatory on the part of the appellee he deposeth and saith: I made such application and inquired if they would make such insurance, because I was asked to, and seeing that the policy given by the defendants did not, in my opinion, cover the

gap. It was shortly after the policy from the defendants was obtained.

To the third additional interrogatory on behalf of the appellee he deposeth and saith: I have not got this letter, because it was a personal letter and not a business letter, and consequently I did not take care of it. I think it may be destroyed.

Additional cross-interrogatories.

I have not got the letter in my possession. It was a personal letter and I have not taken care of it. Our office has been all in disorder on account of repairs, and I cannot find the letter. I cannot tell when I saw it last; it may have been inside of two weeks.
101 I cannot tell in what it was an answer to. This correspondence between Mr. Coale & myself was entirely of a private nature and not official and connected with the office, so I have not paid much more attention to it than to read and answer the same.

RICHARD A. TOOKER.

Subscribed and sworn to before me this 26th day of June, 1873.

MORD LEWIS,
Commissioner, New York.

MORD LEWIS,
Commissioner.

In witness whereof I have hereunto set my hand and affixed my seal this 26th day of June, 1873.

MORD LEWIS, [SEAL.]
Commissioner.

Deposition of George B. Coale.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 27th day of March, in the year of our Lord one thousand eight hundred and
102 seventy-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me, George B. Coale, a witness for the appellee in a certain civil cause depending in the circuit court of the United States in and for the district of Maryland, wherein Samuel G. Reed is appellant and the Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said George B. Coale, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth and saith, as follows, to wit:

1st interrogatory. Please state your name, age, residence, and occupation; how long you have been so occupied; what relation, if any, you bore to the appellee in the year 1868; how long you had been then so connected with it, and whether or not such connection has continued from the time of its beginning to the present.

Answer. I am fifty-four years of age. I reside in Baltimore. I am a fire and marine underwriter. I have been a marine underwriter since

1846, and a fire underwriter since 1842. I was secretary to the appellee, the Merchants' Mutual Insurance Company, from its organization in 1846 to 1870, and became president in 1870, and have continued so to the present time. During my whole connection with this company I have been its actuary, my duty being to make insurances, issue policies, and adjust losses.

103 2nd interrogatory. Did you in 1868 receive, as agent of the appellee, an application for insurance on the ship Minnehaha? If yea, and if such application was in writing, produce the same.

Answer. I did receive such application. The application is the paper marked "Exhibit B," filed with the testimony of Richard A. Tooker, taken by Mord Lewis, esq., in New York. It was inclosed in a letter from Johnson & Higgins, written "per Tooker," dated Jan'y 6th, 1868, which letter is also filed in the testimony of Tooker, above referred to, & marked "Exhibit C."

3rd interrogatory. Do you know the company called the "Atlantic," referred to in the last-mentioned letter? If yea, what is the full name of that company?

Answer. I do know its full name; it is the "Atlantic Mutual Insurance Company of New York." It is the only marine-insurance company called the Atlantic I know anywhere.

4th interrogatory. Did the representation in said letter, that "the Atlantic had taken a large line on vessel and freight at 7 per cent. with scrip," operate as an inducement to the appellee to take the risk therein applied for? If yea, how and why?

(Excepted to.)

Answer. It did. The Atlantic is the largest insurance company in New York, its business being equal to all the other marine companies; it has very large experience and means of information, & its action, especially upon companies abroad, is a strong inducement for them to follow its lead, and I understand the statement in the letter to be

104 that the Atlantic Insurance Company had taken a risk upon the ship on precisely the same condition, as to the suspending of the risk, as was stated in the application to me.

(Answer excepted to.)

5th interrogatory. What do you mean by saying you supposed that its action as to the suspension of the risk was as represented to you in the letter referred to?

(Excepted to.)

Answer. I refer to this clause in the letter, which immediately precedes the reference to the Atlantic: "Our companies here are adverse to Baker Island risks, and for that reason the owners suspend the risk while at Baker's Island loading."

6th interrogatory. Have the words "at Baker's Island loading," or at any other place "loading," by universal and well-established usage and custom, in the business of marine insurance, when applied to a vessel, a particular and definite meaning? If yea, state what that meaning is.

(Excepted to.)

Answer. They have. They are understood to express the condition of the vessel while in port for the purpose of loading.

7th interrogatory. What do you mean by expressing the condition of the vessel?

(Excepted to.)

Answer. I mean to say, we apply the term "loading" to the vessel during the whole period she is in port for the purpose of loading.

105 It is a very common thing for vessels to be reported to underwriters, and by underwriters to each other, in making re-insurances, as "loading," when they are in port for that purpose. We don't qualify the phrase, such as waiting cargo—"loading" is the technical word to indicate that she is there for the purpose of taking in, or is actually taking in, cargo.

(Answer excepted to.)

8th interrogatory. Do you mean by your preceding answer to say that the word "loading," according to the usage and understanding in marine insurance, designates only the purpose for which a vessel is in port, or is it equally applicable to any other place than a port?

(Objected to.)

Answer. I mean it to apply to any place a vessel can go for or with a cargo.

9th interrogatory. In your answer to the 7th interrogatory you use the term "we." Please state whom you mean by "we."

Answer. I mean by the word "we," marine underwriters.

10th interrogatory. When was the payment of the alleged loss in this case first demanded of the appellee; what occurred at the time of such demand in reference thereto?

Answer. The first demand was made in a letter from Samuel G. Reed & Co., March 9th, 1868, heretofore filed, marked "Exhibit No. 1." I answered, dated March 11th, 1868, of which I herewith file a copy, marked "Exhibit No. 2." The copy was made by myself.

(Objected to.)

106 (The proctors for the appellant, who is present, are hereby notified to produce the original of said letter.)

11th interrogatory. Was William D. Booth, esq., or Messrs. Beebe, Donahue & Cook, or either of them, authorized to represent the appellee in reference to the claim against it arising from the loss of the ship Minnehaha?

Answer. Never under any circumstances.

12th interrogatory. Did the appellee at any time agree, directly or indirectly, to be bound or influenced by the results of any suits against other underwriters for loss on the ship Minnehaha or its freight whilst at Baker's Island?

Answer. No.

13th interrogatory. What occurred between you and Messrs. Booth and Tyler at the time of their visit to you in the fall of 1871, referred to by Chas. H. Tyler, esq., in this testimony?

Answer. In the month of September, 1871, after the middle, I think, Mr. Booth & Mr. Tyler called on me at my office, and stated they had come in reference to the loss of the Minnehaha. I took out my letter-book and read to them the copy of my letter of March 11th, 1868, to Samuel G. Reed & Co., Exhibit No. 2. I put away my letter-book and said "that was all I had to say on the subject;" that I considered the claim dead. I called their attention to the date of the letter and the date at which we were speaking. Mr. Booth said that they had

107 documents they wished to offer me, which he held in his hands. I declined to receive them, or do anything which might be regarded as opening the case. Mr. Booth asked me if I would admit that he had tendered them to me; my reply was that "I would admit only his presence in my office, that he must be his own evidence of what he was doing."

14th interrogatory. For what purpose did you call the attention of Messrs. Booth & Tyler to the date of your letter March 11th, 1868, and

the date of the interview between you and them, and what did you say in reference thereto?

(Objected to.)

Answer. I said that from the reply I had given Samuel G. Reed & Co., by this letter, Exhibit No. 2, that there right of action accrued on the receipt of that letter, and as that was more than three years and six months ago I considered the claim bound by limitations.

(Answer objected to.)

15th interrogatory. What conversation did you have with C. H. Tyler, esq., during the trial of this cause in the district court of the United States, in reference to the sought by said suit to be recovered?

Answer. I was out of the court-room one day during the trial, with Mr. Tyler; the claim was the subject of a short conversation between us, in which I expressed my conviction, as I had expressed it before to him, that it was never the intention of the owners that the ship should be covered at all by the insurance during her stay at Baker's
108 Island, and that if he could make me believe that they ever had honestly such intention, I would be willing to pay the loss.

(Objected to.)

16th interrogatory. Mr. Tyler in his answer to the 17th interrogatory refer*ing* to an interview between you and himself, and a conversation between you, which occurred in the fall of 1871; please state whether or not his account of said interview is correct, and give your recollection of said interview at length.

Answer. What I have detailed in my answer already given comprises all that passed between Mr. Booth as counsel for the appellants and myself, in strict reference to the claim. Mr. Tyler says, "They objected very loudly and strongly to the manner used by the former clerk of Mr. Reed in N. York, Mr. Gannett, which they told us was very insulting to the companies in Baltimore;" that statement is not true. The only allusion I made to Mr. Gannett was in a subsequent conversation, in which I narrated all the facts of the case as they had occurred; among the rest my knowledge that the same broker who applied to me for their assurance, endeavored unsuccessfully to obtain a policy on the ship from her arrival at Baker's Island until her departure thence.

(Excepted to.)

17th interrogatory. Did you explain to Mr. Tyler in the conversation referred to what pertinence to this case the fact had, that the brokers who had obtained this insurance had applied for a policy on the ship from the time of her arrival at Baker's Island; if yea, what explanation did you give?

109 (Objected to.)

Answer. I did. I told him I regarded it as evidence that they were making a claim upon a forced construction of a phrase in the policy of my company, which I was convinced they did not intend at the time the policy was taken out. That in their original application I believed they intended to waive the risk of Baker's Island altogether.

(Objected to.)

18th interrogatory. Did all this occur in the only conversation between you and Mr. Tyler, in which you referred to an interview with Gannett?

Answer. I had no interview with Mr. Gannett. He called at my office during my absence. The conversation to which I refer is the only one I had with Mr. Tyler in my office, in which Mr. Gannett was referred to.

(Objected to.)

Cross-examined:

1st cross-interrogatory. In what year were you born?

Answer. In 1819, March 5th.

2nd cross-interrogatory. Then you have been in the insurance business ever since shortly after you had reached your majority?

Answer. I became a marine underwriter on the 1st of March, 1846, four days before I was twenty-seven years of age.

110 3rd cross-interrogatory. What business were you in in 1842?

Answer. On the 1st of January, 1842, I left the Union Bank of Maryland. About the middle of April I became the secretary of a fire-insurance company.

4th cross-interrogatory. Then you have been in the marine-insurance business for twenty-seven years?

Answer. I have.

5th cross-interrogatory. Do you consider yourself conversant with your business?

Answer. I do.

6th cross-interrogatory. As much so as any gentleman of your years in the United States?

Answer. I can't answer comparatively. I consider myself a sufficient master of my business.

7th cross-interrogatory. Is your company one of the oldest in Baltimore City?

Answer. It is the oldest marine company now existing in Baltimore City.

8th cross-interrogatory. Are there any older in New York City?

Answer. I can't say. I don't know their dates.

9th cross-interrogatory. Is the Atlantic older?

Answer. No; I think she dates about 1848.

10th cross-interrogatory. Are you a stockholder in the Merchants' Mutual Insurance Company?

Answer. I am.

11th cross-interrogatory. When you received the application for insurance upon the Minnehaha, with the letter accompanying

111 it, did you answer by a telegram at what rates you would take the insurance applied for upon the Minnehaha?

Answer. It is most likely that I did, because an answer by telegraph is requested in the letter.

12th cross-interrogatory. Did you state your terms?

Answer. I must have done so; certainly I stated my terms.

13th cross-interrogatory. What was your answer?

(Objected to.)

Answer. From the memorandum in pencil upon the application I must have answered that the Baltimore companies would take $5,000 each at seven per cent. nett.

14th cross-interrogatory. Then your answer was different in terms from what the Atlantic was alleged to you to have taken the risk for upon the same vessel for the same voyage?

Answer. There is no difference in terms; both named seven per cent. The Atlantic, being a mutual company, makes a return of premium at the end of the year according to their ability. Joint-stock companies do not.

15th cross-interrogatory. If the Atlantic charged "seven per cent., to return one and a half per cent. if the risk be to a port within the Chesapeake Bay or the Chesapeake Bay be not used, and no loss or contribution be claimed; or to return 5 per cent. if the vessel be lost at Baker's

Island, while the risk under their alleged policy was suspended, upon said vessel for said voyage, were not such terms different from those in the policy in your company covering said vessel for said voyage?

112 Answer. They were different, and were different from those reported to me in the letter referred to in my examination-in-chief.

16th cross-interrogatory. Then those reported in the letter referred to in your examination-in-chief were a misrepresentation, working against the interest of the Minnehaha's owners?

Answer. They were certainly misrepresentations. I don't know that it was working against the interest of the owners, for there may have been difficulties in obtaining insurance, which the misrepresentation may have assisted in overcoming.

17th cross-interrogatory. Explain what you mean by the last answer.

Answer. It may have been necessary to have offered a high premium to obtain the amount that was desired upon the vessel, as hull-risks for long voyages are not considered very desirable risks, and companies as a general thing take but small lines of them.

18th cross-interrogatory. Then I understand you to say that if the letter of Johnson & Higgins to you, containing Samuel G. Reed & Co. application for insurance on the Minnehaha, had contained the exact terms of the rate alleged to have been charged by the Atlantic, you would not have insured the Minnehaha upon such terms?

Answer. I have not said anything of the kind.

19th cross-interrogatory. Would you have insured her on such terms?

113 Answer. I think it is very likely I would have copied the policy of the Atlantic.

20th cross-interrogatory. Then why did you charge 7 per cent. net?

Answer. Because I thought it a sufficient premium for the risk.

21st cross-interrogatory. Then you acted on your own judgment?

Answer. As to rate, yes.

22nd cross-interrogatory. Who paid Johnson & Higgins for effecting this insurance with your company?

Answer. The underwriters. [They always pay the broker, although the application is made by the broker as agent for the insured.]

(The clause in brackets objected to by proctor for appellants as not being responsive.)

23rd cross-interrogatory. If the letter from Johnson & Higgins, inclosing the said application of Reed & Co., had omitted these words, "The Atlantic have taken a large line on vessel & freight at 7 per cent. with scrip," would you have insured the Minnehaha on said voyage at 7 per cent. net?

Answer. It is doubtful. I can't say whether I would or not. I can't say now how far it influenced me at the time.

24th cross-interrogatory. Did you not state in your examination in the district court in the trial of this case, in reply to a question from Mr. Reverdy Johnson, whether, if said quoted sentence had been omitted from said letter containing said application, you would have effected the insurance that you did; did you not state you thought you would have effected said insurance?

114 Answer. I do not remember. The question is in reference to a state of mind existing some years ago—more than four years ago. Of course I cannot answer such questions positively.

25th cross-interrogatory. In effecting marine-insurance are you in the habit of consulting other marine-insurance companies as to what they would do under any given proposed risk?

Answer. Constantly, especially in reference to a commerce in which they have more experience than myself.

26th cross-interrogatory. Then after having received the said letter of Johnson & Higgins, containing said application of Reed & Co., did you apply to the Atlantic for information of the terms of their alleged policy on the said Minnehaha on said voyage?

Answer. I did not.

27th cross-interrogatory. If by the words "whilst at Baker's Island loading" you thought, as you have sworn, you were contracting to suspend the risk all the time the Minnehaha was at Baker's Island, how then were you deceived by an alleged representation that the Atlantic had taken a similar risk, even though the words may not have been identical in the Atlantic's policy with the words in your company's policy, but did, in fact, avoid the policy whilst at Baker's Island?

Answer. The statement that was made to me in the letter con-
115 veyed the simple understanding that the policy of the Atlantic Insurance Company was in all respects in conformity with the application sent me; any variation from that is a misrepresentation.

(Answer excepted to as not responsive.)

28th cross-interrogatory. The 27th cross-interrogatory is repeated.

Answer. I don't know that I have said I was deceived. I did believe, and do believe now, that the wording of my policy excludes the risk at Baker's Island during the whole stay of the vessel, as it was intended to. If the policy of the Atlantic Company had been shown me, I should have made the same exclusion in another and stronger phrase.

(Answer excepted to after the word "deceived.")

29th cross-interrogatory. Did not the words "our companies here are adverse to Baker's Island risks" in said letter of Johnson & Higgins, put you on inquiry as to the risk of that island?

Answer. I was aware of the risk of Baker's Island, having lost a ship there.

30th cross-interrogatory. How many ships have you insured whose voyages were to Baker's Island, or connected with Baker's Island?

Answer. Two only, the Shakespeare & Minnehaha.

31st cross-interrogatory. How many ships have you insured with the words, "at Baker's Island loading," in the policy?

Answer. Only the Minnehaha.

116 32nd cross-interrogatory. Did you ever see any other policies containing the words, "while at Baker's Island loading," except those policies insuring the Minnehaha?

Answer. No.

33rd cross-interrogatory. Did you ever see any policies of marine insurance, covering any vessels, containing the words "whilst loading?"

(Objected to.)

Answer. I don't remember; I am pretty certain I have not. I can't recall at this moment any circumstance under which such words would be required to be used, except the present case.

34th cross-interrogatory. If a vessel had sailed from the port of Baltimore to Liverpool, for the purpose of there loading, and after she had arrived there she was compelled to go into dock for repairs, would you say that she was at Liverpool loading?

Answer. No; I would say she was at Liverpool repairing. It is impossible for a vessel that is in want of repairs, and that has to go into a dock for repairs, to load until the repairs are done.

35th cross-interrogatory. When did you first put in your answer of misrepresentation in this suit?

Answer. As soon as I recovered this letter of Mr. Tooker's from parties to whom it had been lent.

36th cross-interrogatory. Who told you to put in this answer
117 of misrepresentation after you had got your letter back of Mr. Tooker?

Answer. I think I told my counsel to put it in. No one suggested it to me; it was my own suggestion.

37th cross-interrogatory. When did you get that letter back into your possession?

Answer. It was either upon the morning of the trial in the district court, or immediately before that.

38th cross-interrogatory. How long had that letter been out of your possession?

Answer. For some months. During that period I think I mentioned to my counsel the fact of this misrepresentation, but had not the letter as evidence of it.

39th cross-interrogatory. Who had that letter?

Answer. Mr. Wilson, the clerk or secretary of the Baltimore Marine Insurance Company.

40th cross-interrogatory. Is that one of the companies that has been sued by Samuel G. Reed & Co., the result of which is to depend upon the final judgment in this cause?

Answer. It is.

41st cross-interrogatory. Did you effect the insurance of Reed & Co. upon the Minnehaha with the said Baltimore Marine?

Answer. I was the medium of communication between Johnson & Higgins, brokers, and all these companies. The same application and letter being shown to all, and I conveyed their replies to John-
118 son & Higgins. I have sometimes spoken of that letter as the letter of Johnson & Higgins, and sometimes as the letter of Tooker. To prevent confusion I would explain that it is signed "Johnson & Higgins, per Tooker."

42nd cross-interrogatory. Explain in said letter the words "Please let us know how much your companies will take on each, and the lowest respective rates."

Answer. When they wished insurance to any considerable amount, it was their custom to inclose an application to me, to be shown to all the Baltimore companies, to save their multiplying letters, and I would report to them how much each company was willing to take if they accepted the risk.

43rd cross-interrogatory. And it was in pursuance of such conduct on your part that the Merchants' Mutual, Baltimore Marine, and Maryland Insurance and Security Companies effected the insurance upon the Minnehaha, upon the policies upon which they have been sued by Samuel G. Reed?

Answer. It was.

44th cross-interrogatory. Were you not aware of the pendency of the suits of S. G. Reed in New York against the insurances companies there, conveying in words, identical with the words in your policy, the risk upon the Minnehaha?

Answer. I was not. No information was ever communicated to
119 me directly, and I have no recollection of ever having heard anything on the subject until quite recently.

45th cross-interrogatory. Did you never have any correspondence with Wm. D. Booth about said suits?

Answer. In my absence from my office during the entire month of

August, 1871, a letter was received from Mr. Booth dated 3rd of August, 1871, I think, which was answered in my absence by Mr. Morris, the secretary of the company. That is the only correspondence that ever passed between the office and Mr. Booth on that subject. I will here state that in my examination before the district court, I said there had been no communication with Mr. Booth at that time. I was not aware of this letter.

46th cross-interrogatory. Did you never talk with Mr. Booth in New York or elsewhere about the New York suits?

Answer. Never, to my recollection. And here I will state I have had no business intercourse whatever with Mr. Booth that I can now remember since May, 1868; our intercourse has been familiar when we met, but has never been upon business.

47th cross-interrogatory. In your answer to the 15th interrogatory you make use of these words, "That if he could make me believe that they ever had honestly such intention, I would be willing to pay the loss." State what kind of a belief you must have and how the
120 appellant can bring it about, before you are willing to pay the loss.

(Objected to.)

Answer. In the first place they must wipe out the fact, which I believe, that they, after the insurance with our company was effected, endeavored to obtain from another company, insurance for the exact and entire period, which I claim that our policy excepts; also the fact that upon the first knowledge of the loss that reached their New York agent, he, the agent, reported that the Minnehaha was lost, without insurance; and all the information conveyed to me as to what passed between their agent in New York, who made the insurance, and Mr. Tooker, who transacted the business for Johnson & Higgins.

48th cross-interrogatory. Then, in other words, you mean to say that you can have no belief that S. G. Reed & Co. intended by their policy to cover the loss of the Minnehaha at Baker's Island, until the judgment of the final court in this case so determines?

Answer. Nor even then.

Redirect:

The proctor for the appellee herewith files the letter of Messrs. Wallis & Thomas, dated 24th of March, 1873, addressed to A. S. Ridgely, esq., proctor for appellant, which the proctor for the appellant now present admits was, in his presence, on the 24th of March,
121 1873, served upon Mr. Ridgely, whose name alone was signed to the libel as proctor for the libellant. It is marked "Exhibit No. 3."

Signing waived.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of George B. Coale is consent of the respective proctors; and I do also certify that Mr. McClure appeared on behalf of appellants, & Mr. Thomas on behalf of appellees.

And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 27th day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[COMMR'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

122 The exhibits referred to in the foregoing deposition are as follows, to wit:

EXHIBIT No. 2.

(Copy.)

MERCHANTS' MUTUAL INSURANCE CO.,
Baltimore, March 11th, 1868.

Mess. SAML. G. REED & CO., *New York:*

SIRS: Your letter of March 9 is received, giving notice of the abandonment of the ship Minnehaha. We decline to accept the abandonment, and demur to any claim you may make under our policy. In making this reply to your letter we do not commit ourselves to any line of defense, but shall avail ourselves of all or any which at law we may.

Your obd't s'rt,

GEO. B. COALE, *Sec'y.*

EXHIBIT No. 3.

OFFICE OF WALLIS & THOMAS,
37 SAINT PAUL STREET, *Baltimore, 24th March*, 1873.

In the circuit court of the United States for the fourth circuit.

SAMUEL G. REED
vs.
123 MERCHANTS' MUTUAL INSURANCE COMPANY.

Appeal from the district court for the Maryland district.

ANDREW S. RIDGELY, Esq.,
Proctor for Appellant:

You are hereby notified to produce the policy of insurance of the Atlantic Mutual Insurance Company, dated the 19th of December, 1867, ensuring H. A. Barling & A. H. Davis, on account of whom it may concern, the ship Minnehaha, of which policy a copy was filed by Charles Dennis, esq., in his testimony under a commission before Mord Lewis, esq., & which original we are informed is in the possession of the appellant. Unless said original be produced we will claim the right to use said copy as evidence.

We are, yours, truly,

WALLIS & THOMAS,
Proctors for Appellee.

Service admitted Mch. 24th, '73.

AND'W STERRETT RIDGELY.

Deposition of John L. Sanford.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit
124 court of the United States for the fourth circuit in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that, on the 29th day of March, in the year of our Lord one thousand eight hundred and seventy-three, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me, John L. Sanford, a witness for the appellee in a certain civil cause depending in the circuit court of the United States in and for the district of Maryland, wherein Samuel G. Reed is appellant and the Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said JOHN L. SANFORD, being by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is John L. Sanford. I am 60 years of age. I reside in Baltimore. I am a marine surveyor for underwriters.

2. Interrogatory. Are you familiar with the business of navigation? If yea, state how long you have been so, and what have been your opportunities for becoming so.

Answer. I am familiar with the business of navigation. I have
125 been master of a ship for thirty years and upward.

3. Interrogatory. Read in the record of this case admissions of the proctors of the respective parties in reference to vessels going to Baker's Island for guano, examine the diagram referred to therein as part thereof, and state whether, in your opinion as a skilled mariner, a vessel at said island is in any greater danger, when actually engaged in loading, than when not so engaged. State the reasons for your opinion.

(Excepted to.)

The witness having read the agreement referred to in the above question, and examined the diagram therein referred to, answers and says: I don't consider the vessels in any greater danger. The same danger exists all the time they are there. When a vessel arrives at Baker's Island, she moors to the same mooring and in the same way as vessels while loading, and therefore is exposed to the same dangers. There can be no more difficulty in getting a vessel under weigh when loading, provided that the vessel is kept in a proper condition to go to sea, which can be done by having everything in readiness to slip his moorings and make sail on the vessel. The vessel being in ballast, Baker's Island being a port where it is necessary frequently to put to sea, in consequence of the weather, while loading, it would be necessary to trim up
126 that ballast in as small a space as would do no injury to the vessel. All surplus dunnage, wood, water-casks, or any movable articles which are not intended to remain in the hold, should be taken and stored in the between-decks. The two ends of the ship, forward and aft, being prepared for receiving cargo in this way, there will be nearly one-half of the length of the hold clear for receiving cargo. The cargo should then be taken on board, say for a ship of the size of the Minnehaha, about 200 tons stowed in the ends of the ship, from each

end of the ballast, which is in the middle of the ship, to the end of the ship itself. The 200 tons now being on board, I would then take out the ballast at each end of the pile of ballast, working from the guano to the centre of the ballast. When sufficient amount is out, (200 tons,) then fill the space again with guano, and so continue until the whole is out. In that way the ship's trim cannot be affected, and always be kept in a state of readiness to go to sea.

4. Interrogatory. What are the peculiar dangers to which a vessel is exposed at an island such as Baker's Island is described to be in the above-mentioned agreement? Do the dangers consist of the liability to be driven on the island or be driven out to sea?

(Objected to.)

Answer. The particular danger is bad weather, winds blowing in a contrary direction from the regular trade-wind on the island. The danger consists in the liability to be driven on the island.

127 5. Interrogatory. Are there any swells or currents which are dangerous?

Answer. I can't answer. I have never been there. When a regular trade-wind is blowing there is generally a current going with the wind; when the wind ceases to blow and comes in from another quarter, it generally stops the natural course of the current and runs in the opposite direction with the wind then blowing.

6. Interrogatory. If a current sets in a direction from such an island, would it have any other tendency than to carry the vessel out to sea if her moorings are not sufficient to hold her? Would she, in such case, be exposed to any particular danger in consequence of having been so carried out?

Answer. If her moorings were not sufficient to hold her she would be carried out to sea. She would not be exposed to any particular danger provided she be kept in a condition to work the ship.

7. Interrogatory. If the current set toward the island, could any amount of seamanship, or any amount of exertion upon the part of the crew, however large and efficient the latter might be, prevent the ship from being forced on the island?

Answer. Not if it was calm.

8. Interrogatory. Suppose there is a wind when the current is so setting in, what proportion of the crew could be rendered efficient
128 in doing all that might be practicable to prevent a vessel from being driven on shore?

Answer. All the crew. It has got to be done quickly.

9. Interrogatory. What proportion of the crew constitute the watch of a ship?

Answer. One-half the crew, except the cook and steward; they never keep watch except in cases of this kind, when they would be called in.

10. Interrogatory. Would a prudent captain, under any circumstances, withdraw from his ship, for the purpose of loading her, any portion of his crew which were necessary for her safety?

Answer. No.

Cross-examined:

1st cross-interrogatory. How long has it been since you were master of a vessel?

Answer. November, 1865.

2. Cross-interrogatory. Of what vessels did you act as master?

Answer. Schooner Equity, in 1835; the brig Ann, ship Napier, ship

Alexander, ship Sirocco, another ship called the Napier, and also steamers.

3. Cross-interrogatory. State their respective tonnage.

Answer. The least, I presume, was about 120 tons, and the largest 1,800.

4. Cross-interrogatory. Where did you trade?

Answer. All round the globe.

5. Cross-interrogatory. Were you ever at Baker's Island?

129 Answer. No.

6. Cross-interrogatory. Did you ever trade to any island in the Pacific Ocean?

Answer. I have been to islands in the Pacific Ocean, and taken in cargoes.

7. Cross-interrogatory. What islands?

Answer. Chinchas.

8. Cross-interrogatory. Then you have taken in guano?

Answer. I have.

9. Cross-interrogatory. On what kind of a vessel?

Answer. A three-deck ship.

10. Cross-interrogatory. Her tonnage?

Answer. Between twelve & thirteen hundred tons.

11. Cross-interrogatory. State what knowledge, if any you have, and how derived, of Baker's Island?

Answer. All the knowledge I have is from the agreement and diagram filed in this case, and the testimony of the captain, together with conversations with other men, who have loaded at the island.

12. Cross-interrogatory. If you went to Baker's Island with a ship of eighteen hundred tons and upwards in ballast, for the purpose of taking in a cargo of guano, after you had come to your moorings, what would you first do to take on that cargo? In what condition would you put your vessel?

Answer. I would first put my ship in a condition to slip the

130 moorings and go to sea; then I would clear my hold for receiving cargo.

13. Cross-interrogatory. Is that all you would do?

Answer. Yes.

14. Cross-interrogatory. Would you not open your ports?

Answer. No; not if the ship is rolling heavily & not in that port at all, if the swell is heavy.

15. Cross-interrogatory. Suppose there was no swell or current?

Answer. Then, if the weather appeared settled, and the cargo coming off, I would open my ports to facilitate the work; but when the cargo stopped coming, or there was an appearance of bad weather, I should close my ports and caulk them.

16. Cross-interrogatory. Do not storms or squalls suddenly arise at Baker's Island?

Answer. Not too suddenly. With a person on the watch for change of the weather, there would be in my opinion always time to secure the ports. I have never been to Baker's Island, but I have been near there, and have passed through all that weather.

17. Cross-interrogatory. If you have never been to Baker's Island, how do you know that it is frequently necessary, then, to put to sea while loading?

Answer. I give my opinion from what I have heard of the testimony of the captain of the Minnehaha in court, and from having read his testimony, and from other masters of ships, who have loaded at the island.

18. Cross-interrogatory. You have said that after coming to
131 your moorings, the first thing you would do, preparatory to loading, if your vessel were in ballast, would be to clear your hold; how would you clear your hold?

Answer. I would, in the first place, trim up my ballast, as near the centre of the ship as possible, but not too much to injure the ship. Then I would remove everything movable from the ballast to each end of the ship, putting it between decks there to be stowed securely, in case the ship had to put to sea. I mean that the hold in the ends of the ship from the ballast shall be cleaned out, and everything movable stowed in the between-decks securely, in case the ship had to go to sea.

19. Cross-interrogatory. If you arrived at Baker's Island in ballast, with a vessel of the size of the Minnehaha, where would her ballast be?

Answer. In her hold.

20. Cross-interrogatory. Would it cover that hold?

Answer. No.

21. Cross-interrogatory. What portion of that hold would it cover?

Answer. It need not cover over one-half of the length of the hold. I would keep it in about that space.

22. Cross-interrogatory. What else would you have in that hold?

Answer. If I had commanded the Minnehaha, nothing else should have been there, knowing the port to be so dangerous and neces-
132 sary to get away from as quickly as possible.

23. Cross-interrogatory. Where would be your dunnage?

Answer. On the lower deck until it was needed.

24. Cross-interrogatory. If you had had nothing else in your hold but the ballast you have mentioned, and had it in the position you have mentioned, and had your dunnage as mentioned, would you have had your vessel perfectly trimmed?

Answer. Yes; I would have trimmed her by placing part of my dunnage aft, and part forward, and when using the dunnage, take from each end, keeping the ship always in trim.

25. Cross-interrogatory. If you would have had only the ballast you have mentioned in the hold, what do you mean by saying, that after having put the ballast up in the centre of the hold of the ship, you would also have taken movables from the ballast, and put them between the decks, preparatory to your loading?

Answer. My meaning is, that all the movables from the edge of the ballast to the end of the ship, I would put on the lower deck.

26. Cross-interrogatory. But if you would have had nothing else in your hold but ballast, how would you get the movables there?

Answer. I would not have had anything except the ballast in the hold, but if anything else than ballast had been there, I would
133 have removed it as I have described.

27. Cross-interrogatory. If, as you have stated, you would have had the ballast (had you been in command of the Minnehaha) in the hold of the vessel, and the dunnage on the lower deck, and would thus have considered the vessel perfectly trimmed, and would have placed that ballast towards the centre of the hold of the ship, and have also the dunnage placed at the ends of the ship, preparatory to loading, would you then consider your vessel also trimmed?

Answer. I would. I trimmed her by putting it there.

28. Cross-interrogatory. If it were necessary for you, preparatory to loading, to thus place your ballast in the centre of the hold, and thus put your dunnage at each end, on the lower deck, and would consider

your vessel equally well trimmed as when your ballast covered half the length of the hold, as you have said you would have done had you been in command of the Minnehaha, and had your dunnage on the lower deck, why would you not have your vessel, whilst coming to Baker's Island, in the first condition, and be at once thus prepared to load?

Answer. That is what I would have done.

29. Cross-interrogatory. Then you would have had your vessel in the same condition whilst at sea as you would have had it in when loading?

134 Answer. Yes, when I arrived. Previous to my arrival I would have put the vessel in that condition. I would have prepared the vessel in that way for loading.

30. Cross-interrogatory. Then I understand you as saying that a vessel is in the same condition, or can be safely in the same condition, at sea as when loading?

Answer. Yes; that vessel was just as safe.

31. Cross-interrogatory. Then I understand you as saying that at an open island on the Pacific Ocean a vessel is in no more helpless a condition whilst loading than when not loading?

Answer. She is in no more danger when loading than when not loading. The danger is always the same.

32. Cross-interrogatory. You have said that currents generally follow the trade-winds at these islands, from your knowledge of these islands. Cannot the current flow in one direction, viz, towards the island, whilst the wind is blowing from another direction, viz, from the island?

Answer. Blowing from the island it is the regular trade-wind, the vessel lying to the westward of the island.

(Excepted to as not responsive.)

33. Cross-interrogatory. Question repeated.

Answer. Yes; the current may be in one direction and the wind in another. The current may be governed by other causes.

34. Cross-interrogatory. May not the swell of the ocean set in one direction while the wind is from another direction?

135 Answer. Yes.

35. Cross-interrogatory. Then I understand you as saying that the current or swell of the ocean at islands in the Pacific Ocean, such as Baker's Island, do not depend upon the winds?

Answer. Generally they do.

Signing waived by the respective proctors.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of John L. Sanford is consent of the respective proctors; and I do also certify that Mr. Thomas appeared on behalf of appellee, & Mr. McLure on behalf of appellant.

And I do also certify that the deponent was by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 29th day of March, in the year of our Lord one thousand and eight hundred and seventy-three.

136 [COMMR.'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

Deposition of William B. Willson.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 31st day of March, in the year of our Lord one thousand eight hundred and seventy-three, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me, William B. Willson, a witness for the appellee, in a certain civil cause depending in the circuit court of the United States in and for the district of Maryland, wherein Samuel G. Reed is appellant and The Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said WILLIAM B. WILLSON being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

137 1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is William B. Willson. I am twenty-seven years of age. I reside in Baltimore. I am in the marine-insurance business.

2. Interrogatory. Are you familiar with the usages and customs of the marine-insurance business? If yea, how long have you been familiar with them?

Answer. I am. I have been in the business for ten years, and have been more or less familiar with them during that time.

3. Interrogatory. Have the words at "Baker's Island loading," or at any other place "loading," by universal, long existing, well-established, and uniform custom or usage in the business of marine insurance, a particular and definite meaning in contracts of insurance, when applied to a vessel? If yea, what is such meaning?

(Excepted to.)

Answer. They have. These words are generally put in the application, which is a part of the contract, and are used to convey the idea that the vessel is or is to be in port for the purpose of loading, that she is loading, or that she has completed her loading prior to her departure.

Cross examined:

1st cross-interrogatory. What is your position in the insurance business?

138 Answer. I am agent for the United States Lloyds; also secretary of the Maryland Insurance and Security Company. I have occupied this last position since Feb'y 1st, 1873. I had no connection with the company before that.

2nd cross-interrogatory. Has the Maryland Insurance & Security Company been sued by Samuel G. Reed, the appellant in this case, and is the result of that suit to abide the final termination of this?

(Objected to.)

Answer. I am not able to say positively just now; I don't know that such an understanding was had.

3. Cross-interrogatory. Were you not a witness in the trial of this case in the district court?

Answer. I was not.

4. Cross-interrogatory. Were you not there in attendance?

Answer. I was.

5. Cross-interrogatory. Were you not there for the purpose of being a witness in the case?

Answer. I have no recollection of being summoned as a witness.

6. Cross-interrogatory. Were you not there for the purpose of being a witness in the case?

Answer. I don't know that I was.

7. Cross-interrogatory. How many marine-insurance companies called the Maryland Insurance & Security Company are there in Baltimore? Is there more than one?

Answer. There is but one.

139 8. Cross-interrogatory. Don't you know that that is the insurance company which was sued by Samuel G. Reed in the district court of the United States, Maryland district, in the September term, 1872?

Answer. I do not know that a suit has been entered by Samuel G. Reed & Co. against the Maryland Insurance & Security Company.

9. Cross-interrogatory. Don't you know that such a suit is now pending?

Answer. I know that a suit is now pending, I believe against the Merchants' Mutual Insurance Company, but I don't know that there is a suit pending against the Maryland Insurance & Security Company.

10. Cross-interrogatory. And yet you now are and have been, since the 1st of last February, secretary of that company?

Answer. I am, and have been secretary of that company since February, 1873.

11. Cross-interrogatory. Are you a stockholder of that company?

Answer. I am.

12. Cross-interrogatory. How long have you been agent for the United States Lloyds?

Answer. I, as one of the firm of F. W. Willson & Son, have been agent and correspondent of the United States Lloyds since January, 1868.

13. Cross-interrogatory. Have you been a partner of F. W. Wilson & Son since 1868?

Answer. Since January, 1868.

140 14. Cross-interrogatory. Then you were a member of that firm before you reached your majority?

Answer. I was not.

15. Cross-interrogatory. Do I understand you to say that you have been familiar with the usages & customs of marine insurance since you were seventeen years of age?

Answer. I have been more or less familiar with the usages and expressions and customs of marine insurance since I was about seventeen years of age.

16. Cross-interrogatory. How many applications for insurance or policies have you seen with the words in them "while at Baker's Island loading?"

Answer. I have seen but one that I can recollect, as the companies with which I have been connected have always been averse to Baker's Island risks.

17. Cross-interrogatory. One what?

Answer. One application.

18. Cross-interrogatory. From whom & to whom?

Answer. From Samuel G. Reed & Co., through Johnson & Higgins, in

a letter to Mr. George B. Coale and to the Baltimore Marine Insurance Company.

19. Cross-interrogatory. Upon what vessel?

Answer. The ship Minnehaha.

20. Cross-interrogatory. Look upon the paper endorsed with these words: "This is the paper referred to by Richard A. Tooker in his examination as the paper marked 'Exhibit B,' Mord Lewis, commis-
141 sioner," and state whether it is the application to which you refer.

(The witness was handed the commission returned by Mord Lewis, in which the above referred to Exhibit B was filed, and on looking at said exhibit proceeded to answer. This statement of myself as commissioner is objected to by proctor for appellant.)

Answer. It is.

21. Cross-interrogatory. Is that the only application you have ever seen with the words "while at Baker's Island loading," in it?

Answer. It is.

22. Cross-interrogatory. If a vessel were in the port of New York for the purpose of taking in cargo, and yet having first a cargo to discharge, what would you say she was doing?

Answer. I would say she was in port.

WILLIAM B. WILLSON.

Subscribed & sworn to before me this 31st day of March, 1873.

ISAAC BROOKS, JR.,
United States Commissioner.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of William B. Willson is, consent of the respective proctors; and I do also certify that Mr. McLure appeared on behalf of appellant and Mr. Thomas on behalf of appel-
142 lee. And I do also certify that the deponent was by me first carefully examined and cautioned and duly sworn according to law, to testify the whole truth, and that the foregoing deposition was then reduced to writing by me and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 31st day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[COMM'R'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

Deposition of James Carey Coale.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 31st day of March, in the year of our Lord one thousand eight hundred and seventy-three, at my office, in the city of Baltimore, within the district of Mary-
143 land, personally appeared before me James Carey Coale, a witness for the appellee in a certain civil cause depending in the circuit

court of the United States in & for the district of Maryland, wherein Samuel G. Reed is appellant & the Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said JAMES CAREY COALE, being by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your name, age, residence, and occupation?

Answer. My name is James Carey Coale. I am forty-eight years of age. I reside in Baltimore. I am a marine-insurance agent. I have been for twenty-two years engaged in following the different branches of marine-insurance business.

2. Interrogatory. Are you familiar with the usages and customs of the marine-insurance business; if yea, how long have you been familiar with them?

Answer. Entirely so, I think, with the general usages; I have been familiar with them the greater part of twenty years.

3. Interrogatory. Have the words at "Baker's Island loading," or at any other place "loading," by universal, long-existing, well-estab-
144 lished and uniform custom or usage in the business of marine insurance, a particular and definite meaning in contracts of insurance when applied to a vessel? If yea, what is such meaning?

(Excepted to.)

Answer. They have. The meaning is that the vessel is at the port of departure. About the first question we ask an applicant for insurance is to ascertain the time and place of the inception of the risk. I use it in my practice as entirely synonymous with the words in port. Sometimes the words in port are used; sometimes loading; generally, the latter. Sometimes loading on a certain date, or loading at last dates, the idea being to arrive at where the vessel was.

4. Interrogatory. For what purpose and with what meaning are the words "loading" or "discharging" at any named port, or "repairing" at any named port, used in contracts of insurance, under the custom and usage to which you have referred?

(Excepted to.)

Answer. Simply to indicate that the vessel was there, and had not sailed.

5. Interrogatory. Do those words, or any of them, according to the usage or custom to which you have referred, relate to the mode in which the vessel is being, or is to be, actually used, or the purpose for which she is at the designated port, under the usage & custom to which you have referred?

145 (Excepted to.)

Answer. It is uniformly understood that the applicant guarantees that the vessel is then loading or to load, discharging or to discharge, repairing or to repair.

Cross-examined:

1. Cross-interrogatory. With what insurance company are you now connected?

Answer. I am general agent of the Board of Underwriters of New York, which embraces all the marine-insurance companies of New York. I am also sole correspondent and agent of the Atlantic and Phœnix Insurance Companies of New York.

2. Cross-interrogatory. Have you any connection with the appellee?

Answer. In no way, either as stockholder or otherwise.

3. Cross-interrogatory. Have you ever effected a contract of insurance upon any vessel at Baker's Island?

Answer. Never.

4. Cross-interrogatory. Have you ever seen any policies of insurance, except the ones in this case, and the cases depending upon this one, in which the words "while at Baker's Island loading" were used?

Answer. I have never seen the policies in these cases, but I have seen other policies on similar risks and with those words.

5. Cross-interrogatory. State the policies.

146 Answer. I don't think I can state the names.

6. Cross-interrogatory. Do you know the names of the companies by which they were issued?

Answer. I have seen policies issued by the Atlantic & Mercantile, but it has been so long since those risks were issued that I cannot remember the names.

7. Cross-interrogatory. What company do you mean by the Atlantic?

Answer. The Atlantic Mutual Insurance Company of New York.

8. Cross-interrogatory. Do you know whether those insurances were upon freights or upon vessel?

Answer. Either or both; generally freight, I think.

9. Cross-interrogatory. Can you state upon what vessel the insurance was effected?

Answer. I cannot.

10. Cross-interrogatory. Or the names of the owners of the vessel?

Answer. Usually Boston vessels and owners; they did the most of that trade. I think I can answer in the case of one vessel, the ship Winged Racer, belonging to Saml. G. Reed & Co., of Boston & New York. My recollection is that I saw both her charter and her policies, and my recollection is that they had those identical words in them. She was afterwards lost on Baker's Island on that voyage.

147 11. Cross-interrogatory. If a vessel sail hence for the port of Liverpool, with a cargo to be discharged at Liverpool, and for the purpose of there taking in cargo, what would you say that she was doing whilst at Liverpool, assuming she had reached Liverpool, discharged her cargo, and taken on another?

Answer. We would say in port or loading, sometimes one, sometimes the other; they are synonymous terms.

JAS. CAREY COALE.

Subscribed & sworn to before me this 31st day of March, 1873.

ISAAC BROOKS, JR.,
United States Commissioner in & for the District of Maryland.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of James Carey Coale is consent of the respective proctors; and I do also certify that Mr. McLure appeared on behalf of the appellant & Mr. Thomas on behalf of appellee. And I do also certify that the deponent was by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not

148 interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 31st day of March, in the year of our Lord one thousand eight hundred and seventy-three.

ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

Deposition of William E. Morris.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States for the fourth circuit in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 31st day of March, in the year of our Lord one thousand eight hundred and seventy-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me William E. Morris, a witness for the appellee in a certain civil cause depending in the circuit court of the United States in & for the district of Maryland, wherein Samuel G. Reed is appellant and the Merchants' Mutual Insurance Company of Baltimore is appellee.

149 And the said William E. Morris being by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What is your name, age, residence, & occupation?

Answer. My name is William E. Morris. I am thirty-two years of age. I reside in Baltimore. I am secretary of the Merchants' Mutual Insurance Company. I have been secretary of that company since 1871. I was clerk with the company from 1865 to 1871, when I became secretary.

2. Interrogatory. Has the appellee, or any person connected with it, so far as you know, ever given the appellant, or any representative of his, reason to believe that it would abide by the result of any case between him and other companies?

(Objected to.)

Answer. On the contrary, when Mr. Gannett, representing Samuel G. Reed & Co., with Capt. Bursby, the capt. of the Minnehaha, came into the office the office of the Merchants' Mutual Ins. Co., on March 10, 1868, showing the protest of the ship Minnehaha, and leaving notice of loss and abandonment, I told them that we refused to accept it, and Mr. Coale wrote to Samuel G. Reed & Co. next day. Mr. Gannett, at the time of his calling at the office, as I have stated, brought
150 with him, and left his letter, dated March 9th, 1868, addressed to Allen A. Chapman, esq., president of the Merchants' Mutual Ins. Company, which has heretofore been filed, and marked "Exhibit No. 1, Isaac Brooks, jr., U. S. commr." On the following day Mr. Coale wrote to Samuel G. Reed & Co. a letter, dated March 11th, 1868, of which a copy has heretofore been filed, marked "Exhibit No. 2, Isaac Brooks, jr., U. S. commr."

(The proctor for the appellant, who is here present, is here notified by the proctor for the appellee to produce the original of the letter above referred to.)

The paper herewith filed, marked "Exhibit No. 4," is a press-copy of the original letter. Again, August 4th, 1871, I, as secretary of the company, received a letter from William D. Booth, addressed to Mr. George B. Coale, dated August 3rd, 1871, and which I now file, marked "Exhibit No. 5," which I answered August 4th, 1871, declining to accept any claims. I here file a copy of my letter, M, Exhibit No. 6.

(The proctor for the appellant, who is here present, is notified by the counsel for the appellee to produce the original of exhibit 6.

The proctor for the appellant objects to the admis'ability as evidence in this cause of the Exhibits No. 2, 4, and 6, filed by the commissioner.)

3. Interrogatory. Is William D. Booth, the author of Exhibit No. 5, the same gentleman who is now acting as one of the proctors for the appellant in this case?

Answer. Yes.

151 4. Interrogatory. Where did he live at the date of said letter, and where does he live now?

Answer. In New York.

Cross-examined:

1st cross-interrogatory. Are you a stockholder in the appellee?

Answer. I am.

2. Cross-interrogatory. How do you know William D. Booth is the author of Exhibit No. 5, filed in this cause?

Answer. I have often seen and received letters from him, and a few months after the receipt of exhibit 5 he was in our office and referred to writing that letter.

WM. E. MORRIS.

Subscribed & sworn to before me this 31st day of March, 1873.

ISAAC BROOKS, JR.,
U. S. Commissioner.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of William E. Morris is consent of the respective proctors; and I do also certify that Mr. McLure appeared on behalf of the appellant & Mr. Thomas on behalf of the appellee. And I do also certify that the deponent was by me first carefully examined and cautioned and duly sworn according to

152 law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 31st day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[COMMR'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

The exhibits referred to in the foregoing deposition are as follows, to wit:

EXHIBIT No. 4.

MARCH 11th, 1868.

Mess. SAML. G. REED & CO.,
New York:

SIRS: Your letter of March 9 is received, giving notice of the abandonment of the ship Minnehaha. We decline to accept the abandon-

ment, and demur to any claim you may make under our policy. In making this reply to your letter we do not commit ourselves to any line of defense, but shall avail ourselves of all or any which at law we may.

Your obt. svt.,

GEO. B. COALE, *Secty.*

153 EXHIBIT No. 5.

Ship Minnehaha.]

65 WALL ST., NEW YORK,
Aug. 3d, '71.

GEO. B. COALE, Esq.:

MY DEAR SIR: I have received a call from Samuel G. Reed, of Boston, about the claim in the policies on ship Minnehaha. He calls on me as the counsel for underwriters and proposes that a statement of facts shall be agreed upon, and that it shall be submitted and argued before the general term of our superior court, with the privilege of either party, if dissatisfied, to take an appeal therefrom to the court of appeals, and that the decision shall be final as to all the underwriters. This proposition is a fair one, provided all the policies contain the same stipulation, and provided there be no special defence. If I remember rightly, you thought you had a special defence. Let me hear from you on the subject.

Always truly,

WM. D. BOOTH,
62 *Wall St.*

EXHIBIT No. 6.

(Copy.)

OFFICE OF THE MERCHANTS' MUTUAL INSURANCE CO.,
58 *Exchange Place, Baltimore, Aug'st 4th*, 1871.

WM. D. BOOTH, Esq.,
62 *Wall St., New York:*

DEAR SIR: Your letter of yesterday received addressed to Mr.
154 Coale, out of the city at present, & we note Mr. Reed's proposition to you regarding the ship Minnehaha. This company has already declined to accept any claim made by Messrs. Samuel G. Reed & Co. under our policy.

Yours, truly,

WM. E. MORRIS, *Secty.*

In the circuit court of the United States for the fourth circuit, Maryland district.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY.

Interrogatories to be propounded to witnesses to be examined in the city of New York on behalf of the appellee.

To Charles Dennis, esq.:

1. In your testimony heretofore given under commission before Mord Lewis, esq., you say you cannot file the original policy of insurance issued by the Atlantic Mutual Insurance Company in favor of H. A. Bar-

ling & A. H. Davis on the ship Minnehaha, of which a copy, marked "Exhibit A," was filed with your answer, because said original was the property of the assured, who you supposed held the same. Please state whether you have since learned whether said original is in the hands of any other person or not. If yea, in whose hands it is and when it was delivered to such person.

To any clerk or other person connected with the Atlantic Mutual Insurance Company:

155 1. Please state your age, residence, & occupation; & what connection, if any, you have with the Atlantic Mutual Insurance Company.

2. Please state who has the original policy of insurance, dated the 19th day of December, 1867, issued by the Atlantic Mutual Insurance Company to Henry A. Barling & A. H. Davis, on the ship Minnehaha, of which a copy was filed by Charles Dennis, esq., with his testimony, before Mord Lewis, esq.

To Henry A. Barling, esq.:

1. Please state your age, residence, & occupation.

2. Please state whether a policy of insurance, dated the 19th day of December, 1867, on the ship Minnehaha, was issued by the Atlantic Mutual Insurance Company in favor of you & A. H. Davis. If yea, state who now has said original policy of insurance.

To Richard A. Tooker, esq.:

1. Please state whether you are the same person whose testimony was heretofore taken by Mord Lewis, esq., under a commission.

2. Please state whether after the policy of the appellee, founded on the application heretofore filed with your testimony, was issued, or after said application was made, the appellant, or any person representing him, applied to any other insurance company to insure his interest, or that of S. G. Reed & Company in the ship Minnehaha from the arrival of the ship at Baker's Island till her departure thence, as the period not intended to be covered by the policy of the appellee. State
156 all you know in reference thereto.

WALLIS & THOMAS,
Attys. for Appellee.

We hereby agree that a commission shall issue to Mord Lewis, esq., to take the answers of the witnesses to the above & annexed interrogatories & cross-interrogatories.

WALLIS & THOMAS,
Attys. for Appellee.
J. A. L. McCLURE,
Atty. for Appellant.

Cross-interrogatories to be propounded to Charles Dennis, esq.:

1. If in answer to the appellee's interrogatory you say you have learned since the first taking of your testimony in this cause in whose hands the policy in said interrogatory referred to is, please state how you came to such knowledge, how you learned in whose hands it is, & how you learned when it came into such hands.

Cross-interrogatory to be propounded to any clerk or other person connected with the Atlantic Mutual Insurance Company:

If in answer to the 2nd interrogatory you state who has the original policy referred to, please state your means of knowledge and how you know such person has it.

Cross-interrogatory to be propounded to Henry A. Barling, esq.:

1. If you state who has the original policy referred to in the 2nd interrogatory to be propounded to you, please state your means of knowledge and how you know such person has said original policy.

157 The proctor for the appellant objects and excepts to the 2nd interrogatory to be propounded to Richard A. Tooker, esq., and insisting on such objection and reserving such exception, nevertheless asks the said Tooker to answer the following cross-interrogatory:

1. If you state, in answer to the 2nd interrogatory, that the appellant, or any one for him, applied to any other insurance company to insure his interest, or that of S. G. Reed & Co., in the Minnehaha for the period it intended, as supposed by you, to be covered by the policy of the appellee, and that he made such application after this application to the appellee had been made, or the policy founded thereon had been issued, please state your means of knowledge, and how you know such other application was made, if made.

J. A. L. McCLURE,
Proctor for Appellant.

True copy. Test:

JAS. W. CHEW, *Clerk.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Mord Lewis, Esq., greeting:

[SEAL OF CT. CT.] Be it known that you are appointed a commissioner to examine evidences in a cause now depending in

158 the circuit court of the United States for the fourth circuit, in and for the Maryland district, between Samuel G. Reed, appellant, and Merchants' Mutual Insurance Company of Baltimore, appellee.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that, at such time and place as to you shall seem convenient, you cause to come before you all such *evidences* as shall be named or produced to you by either the appellant or appellee, and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid, and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said circuit court with all convenient speed.

Witness the Hon. S. P. Chase, Chief-Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and seventy-two.

Issued April 1st, 1873.

JAS. W. CHEW,
Clerk Circuit Court U. S.

Commissioner's oath.

159 You shall according to the best of your skill and knowledge truly, faithfully, and without partiality to any or either of the parties, take the examination and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereto annexed: So help you God.

MORD LEWIS.

The above oath was administered to Mord Lewis by me this 8th day of April, 1873.

[SEAL.] SETH M. ELDRIDGE,
Notary Public in & for the City & County of New York.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses, produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down, and transcribe the said depositions, or any of them: So help you God.

In the circuit court of the United States for the fourth circuit, Maryland district.

SAMUEL G. REED
agst.
MERCHANTS' MUTUAL INSURANCE COMPANY.

160 At the execution of a commission, issued out of the circuit court of the United States for the fourth circuit, in and for the Maryland district, the first day of April, in the year of our Lord eighteen hundred and seventy-three, directed to Mord Lewis, empowering him to examine witnesses in a case pending in said court between Samuel G. Reed, appellant, and Merchants' Mutual Insurance Company of Baltimore, appellee, I, Mord Lewis, the commissioner named in the said commission, having met this 8th day of April, in the year of our Lord 1873, at No. 51 Wall street, in the city of New York, in the State of New York, and having taken the oath to the said commission annexed, proceeded to take the following depositions, to wit:

CHARLES DENNIS, being first duly sworn in due form of law:

To the first interrogatory on the part of the appellee he deposeth and saith: In searching for the policy amongst the archives of the company, one of the clerks stated that he believed the policy was delivered to Mr. Samuel G. Reed, or his representative, on the order of Barling & Davis.

CHARLES DENNIS.

Subscribed & sworn to before me this 8th day of April, 1873.
MORD LEWIS,
Commissioner.

161 JOSEPH H. CHAPMAN, being first duly sworn in due form of law:

To the first interrogatory on the part of the appellee he deposeth and saith: I am forty years of age. I reside in the city of New York. I am secretary of the Atlantic Mutual Insurance Company of New York.

To the second interrogatory on the part of the appellee he deposeth and saith: I suppose Samuel G. Reed has it. Subsequent to the issue of this policy, some one called on behalf of Samuel G. Reed to procure information respecting this policy; authority was also given to this party by the parties to whom it was issued to procure such information.

That we gave such information, and subsequent thereto the same party called upon us with an order from Messrs. Barling & Davis to deliver up the policy. And we delivered the policy to this party who represented Samuel G. Reed. This is to the best of my belief and knowledge.

J. H. CHAPMAN.

Subscribed & sworn to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

Cross-examination of Charles Dennis, esq.:

To the first cross-interrogatory on the part of the appellant he deposeth and saith: My only information is derived from statement made by clerk to me.

CHARLES DENNIS.

162 Subscribed & sworn to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

Cross-examination of Joseph H. Chapman:

To the first cross-interrogatory on behalf of the appellant he deposeth and saith: I myself delivered the policy up to the party, who stated to me that he wanted it for Samuel G. Reed, and it was delivered on the order of Barling & Davis.

J. H. CHAPMAN.

Subscribed & sworn to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

HENRY A. BARLING, being first duly sworn in due form of law:

To the first interrogatory on the part of the appellant he deposeth and saith: I am fifty years of age. I reside at Engl'wood, New Jersey. I am a merchant.

To the second interrogatory on the part of the appellant he deposeth and saith: Such a policy was issued on or about that date. The policy is not in our possession. My recollection is that it was surrendered to the company when cancelled, and that we subsequently gave an
163 order to Captain Reed, representing Samuel G. Reed & Co., on the Atlantic Mutual Insurance Company for it. And I do not know if he received it.

HENRY A. BARLING.

Sworn & subscribed to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

Cross-interrogatories:

To the first cross-interrogatory on the part of the appellee he deposeth and saith: I cannot state who has the policy.

HENRY A. BARLING.

Subscribed & sworn to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

RICHARD A. TOOKER, being first duly sworn in due form of law:

To the first interrogatory on the part of the appellant he deposeth and saith: I am the same person whose testimony was heretofore taken by Mord Lewis, esq.

To the second interrogatory on the part of the appellant he deposeth and saith: No application was made in any other form than in the application filed with my former testimony.

164 RICHARD A. TOOKER.

Subscribed & sworn to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

Cross-examination:

To the first cross-interrogatory on the part of the appellee he deposeth and saith: I know of no other application or any other policy in any other form that the one contained in the application heretofore filed with my testimony.

RICH'D A. TOOKER.

Subscribed & sworn to before me this 8th day of April, 1873.

MORD LEWIS,
Commissioner.

In witness whereof I have hereunto set my hand and seal this 8th day of April, A. D. 1873.

MORD LEWIS, [SEAL.]
Commissioner.

Fees of commission, $36.12.

Deposition of Charles R. Johnson.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Isaac Brooks, jr., a commissioner appointed by the circuit
165 court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 2nd day of April, in the year of our Lord one thousand eight hundred and seventy-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me Charles R. Johnson, a witness for the appellee in a certain civil cause depending in the circuit court of the United States for the district of Maryland, wherein Samuel G. Reed is appellant and the Merchants' Mutual Insurance Company of Baltimore is appellee.

And the said CHARLES R. JOHNSON, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth and saith as follows, to wit:

1st interrogatory. State your name, age, residence, and occupation.

Answer. My name is Charles R. Johnson; I am forty-six years of age; I reside in Baltimore County; I am at present a marine surveyor.

2. Interrogatory. What was your occupation before you were a marine surveyor, and how long had such been your occupation?

166 Answer. I was master of ships from 1850 to 1865, and since that time I have been superintendent of the steamers belonging to

the Baltimore & Ohio Railroad, as long as they continued running, as well as marine surveyor at the same time. The ships of which I was master were engaged in long voyages, European, East India, Pacific and China & California trade. Before I became master I followed the sea, from 1842 up to 1850, when I took command, and since that time up to 1865 as master.

3. Interrogatory. Are you familiar with the business of navigation?

Answer. Yes.

4. Interrogatory. Have you ever, in the capacity of master of a ship, been with the ship of which you were master to any of the Pacific guano islands for the purpose of loading with guano, and have you loaded at any such islands with such cargo?

Answer. I have. I loaded the ship Sir John Franklin with 1,500 tons of guano at the Chinchas Island, lying to the southward of Callao, near the Peruvian coast.

5. Interrogatory. Read in the record of this case the admissions of the proctors for the libellant, beginning with the words "it is" and ending with the words "purpose" in reference to vessels going to Baker's Island for guano; examine the diagram referred to therein as part thereof, and state whether, in your opinion as a skilled mariner, a vessel at said island is in any greater danger when actually engaged
167 in loading, than when not so engaged. State your reasons.

(The witness having read the admissions & examined the diagram referred to, answers and says:)

Answer. I don't think she is in any more danger while loading than she is while waiting to load. I should suppose a man would be always prepared to slip his moorings while laying in an open roadstead like Baker's Island. There is nothing to prevent him from being ready that I know of.

6. Interrogatory. Is it necessary or customary, or would it be proper, if a vessel is at an island such as Baker's Island is described in the agreement before mentioned to be, and is ballasted with stone and sand, to throw out all of her ballast before beginning to load?

Answer. No seaman would do it who knew his business. I should keep my ballast in the centre of the ship, and take cargo, such as he was going to load with, as I required it, in both ends of the ship, and after I got a hundred or a hundred & fifty tons in, I should then discharge my ballast gradually, supplying its place with cargo, until I made my ship perfectly safe with cargo before discharging the whole of the ballast.

Cross-examined:

1st cross-interrogatory. Are you a stockholder of the Merchants' Mutual Insurance Company of Baltimore?

Answer. No. I am not concerned with the company in any way.

168 2. Cross-interrogatory. What was the tonnage of the ships you commanded as master?

Answer. One 600 tons, one 1,000 tons, one 1,400 tons, one 1,500 tons, one 2,000 tons.

3. Cross-interrogatory. Have you ever been at any of the Pacific islands except the Chinchas as master with your vessel? and, if so, state what islands.

Answer. I never moored at any of them except at the Chinchas.

4. Cross-interrogatory. Are the Chinchas dangerous islands?

Answer. They are not considered very safe. We are always prepared to unmoor, if necessary.

5. Cross-interrogatory. In what do their dangers consist?

Answer. The wind blows hard there, and there is a heavy swell at times, which prevents vessels from loading, and prevents boats from coming alongside with cargo.

6. Cross-interrogatory. Are the said islands subject to sudden squalls?

Answer. We had no very serious squalls while I remained there. I can't answer more fully.

7. Cross-interrogatory. You have said that you have followed the sea from 1842 to 1865, and that you were master of ships from 1850 to 1865, and are familiar with the business of navigation. Now, state whether such employment & such familiarity enable you to say whether the Chincha Islands are dangerous islands, and subject to sudden squalls?

Answer. I can give you my experience with the Chincha
169 Islands.

(Proctor for appellant excepts to the answer as not responsive.)

8. Cross-interrogatory. Question repeated.

Answer. I have nothing more to say about it.

(Here the proctor for the appellant states that he is unable to get an answer from the witness to his question.)

9. Cross-interrogatory. Have the Chincha Islands anchorage; and, if so, what is it?

Answer. There are buoys there, but most of the ships anchor with both anchors and a very long scope of chain; the water is very deep.

10. Cross-interrogatory. When vessels anchor at said islands with their own anchors, to what do the anchors take hold?

Answer. Of the bottom, whatever it may be; some is rocky, some sandy, and some coral.

11th cross-interrogatory. When you were there did you so anchor, or did you fasten onto the buoys?

Answer. I anchored my ship with her own anchors and chains.

12. Cross-interrogatory. Have you ever been to Baker's Island as master of a ship, or in any capacity?

Answer. No.

13. Cross-interrogatory. Do you know anything about the island?

Answer. Nothing but hearsay.

14. Cross-interrogatory. Do you know where it is?

Answer. I think so.

170 15. Cross-interrogatory. Where is it?

Answer. In the Pacific, much to the south'ard of the Chinchas.

16. Cross-interrogatory. Do you know its latitude or longitude from Greenwich or Washington?

Answer. I do not.

17. Cross-interrogatory. Suppose you were going to that island for guano from Honolulu in ballast with a ship of 2,000 tons, how would you have your ship ballasted?

Answer. I should have it to occupy about half the space of the ship, and as near from the centre towards each end as she would require it, reserving a place in the ends, if possible, (and it would be possible in a ship of that size,) for guano.

18. Cross-interrogatory. Where would you have your dunnage and water-casks?

Answer. On the lower deck.

19. Cross-interrogatory. What amount of ballast would you have?

Answer. In the Minnehaha I should have about 400 or 450 tons, as near as I recollect this vessel; 450 tons, I should say. I saw her in China.

20. Cross-interrogatory. If in charge of the Minnehaha, the vessel of which you have just spoken, and having her ballasted as you have just stated, and being with her at the moorings at Baker's Island, what would be the first thing you would do preparatory to loading with guano?

171 Answer. I would first take in guano in the forward and after-hold of the vessel, say fifty tons at each hatch, then I would take out fifty tons of ballast, from the after or forward end of my ballast, supplying its place with guano; I would proceed in that way till I thought my vessel perfectly safe, then if the ballast was not all out, I would discharge the whole of it.

21. Cross-interrogatory. Would you have kept her sails and rigging, during all this time, in the same condition they were in when coming to your moorings?

Answer. I should have unbent my light sails, sent the light yards down—the royal and gallant yards—and had my ship prepared to slip her moorings at any moment, to make sail.

22. Cross-interrogatory. Would you have furled any of your sails?

Answer. I would, all of them.

23. Cross-interrogatory. Where would you have had your dunnage and water-casks while loading was going on?

Answer. On the lower deck, until I wanted space for cargo.

24. Cross-interrogatory. Would not a portion of your crew be liable to be on shore while loading the vessel?

Answer. A prudent man would not send but a small number, at any time, while laying at the island. It is customary to have extra men belonging to the ship while at the island. I can't say anything

172 about Baker's Island, I speak of the Chincha.

25. Cross-interrogatory. State the difference in the condition of a vessel while loading and not loading at Baker's Island.

Answer. None whatever, not according to my ideas.

CHARLES REID JOHNSON.

Subscribed & sworn to before me, April 2nd, 1872.

ISAAC BROOKS, JR.,
U. S. Commissioner.

I, Isaac Brooks, jr., a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of Charles R. Johnson is consent of the respective proctors, and I do also certify that Mr. McLure appeared for the appellant & Mr. Thomas for the appellee.

And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 2nd day of April, in the year of our Lord one thousand eight hundred and seventy-three.

173 [COMMR'S SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Maryland.

Motion to remand commission issued 4 March, 1873.

In the circuit court of the United States for the fourth circuit.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY.

To the honorable Hugh Lenox Bond, judge of the circuit court of the United States for the fourth circuit:

The petition of the appellee respectfully represents that the appellant has filed exceptions to the execution & return of the commission issued to Mord Lewis, esq., on the fourth day of March, 1873. Your petitioner therefore prays that said commission be remanded to said commissioner for the purpose of executing & returning the same anew, if necessary, or of otherwise correcting any formal errors, if there be any, in the execution & return thereof.

WALLIS & THOMAS,
Proctors for Appellee.

Ordered, this 19th of June, 1873, that the above commission be remanded, and that the commissioner be directed to re-execute the same before a proper person qualified to administer the oath to be taken
174 by him, and that he re-examine witnesses and return the said commission, as soon as may be, to this court.

HUGH L. BOND,
Ct. Judge.

JUNE 19, 1873.

It is hereby agreed that either the appellant or appellee may file additional interrogatories or cross-interrogatories, to be propounded to the witnesses to be re-examined under said commission.

J. A. L. MCCLURE,
Proctor for Appellant.
WALLIS & THOMAS,
Proctors for Appellee.

Notice to appellee.—Filed June 19, 1873.

In circuit court of United States, fourth circuit, Md. district.

SAMUEL G. REED
vs.
THE MERCHANTS' MUTUAL INSURANCE CO. } In admiralty. June term, 1873. On appeal.

To the appellee:

You are hereby notified to produce, as evidence in the said-entitled cause, the letter from Richard A. Tooker, a witness already examined on behalf of the appellee in said cause, to George B. Coale, esq., the
175 agent of the appellee, and also a witness already examined in said cause on behalf of the appellee, dated April 12th, 1873.

J. A. L. MCCLURE,
Proctor for Appellant.

(Endorsed:)
Service of copy admitted.

WALLIS & THOMAS,
Proctors for Appellee.

POLICIES.

10

Vessel. No. 16948.

By the Atlantic Mutual Insurance Company.

160,488 H. A. Barling & A. H. Davis, executors, on account of whom it may concern. In case of loss, to be paid in funds current in the city of New York, to them. Do make insurance, and cause to be insured, lost or not lost, at and from Honolulu to Baker's Island, and at and thence to a port in the United States, not east of Boston, with liberty to call at Hampton Roads for orders.

It is understood and agreed that the risk is to be suspended from the date of her arrival off Baker's Island, and until the vessel shall have sailed, taken her departure, and obtained a good offing from the island.

Warranted by the assured not to use any of the Guano Islands, nor to load petroleum oil in barrels, or lime under deck, upon the body, tackle, apparel, and other furniture of the good ship called the Minne-
176 haha, whereof is master for this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel or the master thereof is or shall be named or called.

Beginning the adventure upon the said vessel, tackle, apparel, &c., at
Sum insured $30,000 and from aforesaid, and so shall continue and endure until the said vessel be safely arrived at aforesaid, and until she be moored twenty and four hours in good safety. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch, and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance.

The said vessel, tackle, &c., hereby insured are valued at sixty thousand dollars, without any further account to be given by the assured to the assurers, or any of them, for the same.

Touching the adventures and perils which the said Atlantic Mutual Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thei*v*es, jettisons, letters of mart and counter-mart, reprisals, takings at sea, arrests, restraints and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, or any
177 part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel, or any part thereof, without prejudice to this insurance; to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; having been paid the consideration for this insurance by the assured or assigns, at and after the rate of seven per ct.; to return one-half per ct. if the risk be to a port within Chesapeake Bay, or the Chesapeake Bay be not used, and no loss or contribution be claimed; or, to return five per ct. if the vessel be lost at Baker's Island, while the risk under this policy be suspended and this company not liable for loss.

And in case of loss, such loss to be paid in thirty days after proof of

loss, and proof of interest in the said (the amount of the note given for the premium, if unpaid, being first deducted,) but no partial loss or particular average shall in any case be paid unless amounting to five per cent. Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in day of date to this policy, then the said Atlantic Mutual Insurance Company shall be answerable only for so
178 much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Atlantic Mutual Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in day of date to this policy, the said Atlantic Mutual Insurance Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said Atlantic Mutual Insurance Company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

And it is further agreed that in case a total loss shall be claimed, for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value shall be her valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk at the port to which she then belonged.

179 And, lastly, it is agreed that if the above vessel upon a regular survey should thereby be declared unseaworthy by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this policy.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to this company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

In witness whereof the president or vice-president of the said Atlantic Mutual Insurance Company hath hereunto subscribed his name and the sum insured, and caused the same to be attested by their secretary, in New York, the 19th day of December, one thousand eight hundred and sixty-seven.

If the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$30,000, (thirty thousand dollars.)

180 [Name erased,] *President.*

[Name erased,] *Secretary.*

[50c. int. rev. stamp.]

[Upon the margin of the foregoing policy is printed in red ink the following, to wit:]

Warranted by the assured that the vessel be commanded by a captain holding a certificate from the American Shipmasters' Association. In case of claim for loss or damage, a deduction of one-third from the cost of repairing or replacing the same shall be made, after deducting the value of the old materials, except in the case of anchors and of sheathing of copper or other metal; a deduction of one-fortieth from the expense of repairing or replacing the metal sheathing, or any part thereof, (after first deducting the value of the old metals and nails,) shall be made for every month since the vessel was last sheathed until the expiration of forty months, after which time the cost of remetalling or repairing the same shall be wholly borne by the assured.

If a technical total loss be claimed, similar deductions shall be made from the estimated repairs, and unless the nett cost thereof would exceed a moiety of the value of the vessel after making such deductions the loss shall be deemed partial only.

Warranted by the assured free from claim on account of capture, seizure, detention, or destruction by, or arising from, any belligerent nation, or by or from any officer, civil or military, or other person
181 claiming to act in their name, or under their authority, or in their behalf.

C. D., V. P.

Proof of loss to be authenticated by the agent of the company, if there be one, at the place such proofs are taken.

Warranted by the assured that vessels to be loaded with grain from the ports of New York, Philadelphia, or Baltimore for foreign ports are to be loaded under the inspection of the surveyor of the board of underwriters, and his certificate as to their proper loading and seaworthiness obtained, or the insurance under this policy to be void.

(The foregoing policy is endorsed on the back as follows, to wit:)

March 4, 1868. Pay five pr. ct. return premium under the within ins'e, the vessel having been lost at Baker's Island, while the ins'e was suspended and the co. not liable for loss, and cancel this policy. Return premium, $1,500, less 3½, 52.50—$1,447.50.

(Across the face:) R. P. B.

This policy is put in the case as evidence by agreement.

Reed vs. Merch'ts' Mut. Ins. Co.

Jan. 22nd, 1874.

J. A. L. McCLURE,
Proctor for Appellant.
WALLIS & THOMAS,
Proctors for Appellees.

182 19th Dec., 1867. Atlantic Mutual Insurance Company. H. A. Barling & A. H. Davis, ex'rs. Honolulu to Baker's Island. Vessel (14) ship Minnehaha. $30,000 @ 7 per cent., $2,100; policy, 1.25 —$2,101.25.

(In lead pencil:) Paid Dec. 20, '67. Record 18, folio 122.

Policy on freight.

8. Freight. No. 7,408.

By the Atlantic Mutual Insurance Company.

H. A. Barling & A. H. Davis, executors, on account of whom it may
(160,487) concern. In case of loss to be paid, in funds current in the city of New York, to them. Do make insurance and caused to be insured,

lost or not lost, at and from Honolulu to Baker's Island, and at and thence to a port in the United States not east of Boston, with liberty to call at Hampton Roads for orders. It is understood and agreed that this risk is to be suspended from the date of her arrival off Baker's Island, and until the vessel shall have sailed, taken her departure and got a good offing from the island.

On freight. On one-half.

Warranted by the assured that the vessel be commanded by a captain holding a certificate from the American Shipmasters' Association.

183 Upon the freight of all kinds of lawful goods and merchandise, laden or to be laden on board the good ship called the Minneha-

Sum insured, $27,500

ha, whereof is master for this present voyage , or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said freight from and immediately following the loading thereof on board of the said vessel, at as—aforesaid, and so shall continue and endure until the said goods and merchandise shall be safely landed at as—aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said freight hereby insured is valued at the said one-half at the sum insured.

Proof of loss to be authenticated by the agent of the company, if there be one at the place such proofs are taken.

Touching the adventures and perils which the said Atlantic Mutual Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart, and counter-mart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people, of what nation, condition or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes, whereby the said freight, or any part thereof, shall be lost. And in case of

184 any loss or misfortune, it shall be lawful and necessary to, and for the assured , factors, servants, and assigns to sue, labor, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment, to the charges whereof the said Insurance Company will contribute according to the rate and quantity of the sum herein insured, as far forth as the said freight will be liable for the same; having been paid the consideration for this insurance by the assured, or assigns, at and after the rate of seven per ct. To return one-half per ct. if the risk be to a port within the Chesapeake Bay, or the Chesapeake Bay be not used, and no loss or contribution be claimed, or to return five per ct. if the vessel be lost at Baker's Island while the risk under this policy be suspended and this company not liable for loss.

Premium ... $1,925
Policy 1 25
$1,926 25

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said (the amount of the note given for the premium, if unpaid, being first deducted,) but no partial loss or particular average shall in any case be paid, unless amounting to five per cent: Provided, always, and

it is hereby further agreed, that if the said assured shall have
185 made any other assurance upon the premises aforesaid prior in day of date to this policy, then the said Atlantic Mutual Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured. And the said Atlantic Mutual Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in day of date to this policy, the said Atlantic Mutual Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said Atlantic Mutual Insurance Company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance.

It is also agreed, that the property be warranted by the assured free from any charge, damage, or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. And lastly, it is agreed, that if the above vessel upon a regular survey should thereby be declared unworthy, by reason of her being unsound or rotten or
186 incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this policy.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to this company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade, to be at liberty to proceed to an open port, and there end the voyage.

[50 c. int. rev. stamp.]

In witness whereof, the president or vice-president of the said Atlantic Mutual Insurance Company hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their secretary, in New York, the 19th day of December, one thousand eight hundred and sixty-seven.

If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$27,500 (twenty-seven thousand five hundred doll's.)

(Name erased,)
President.
(Named erased,)
Secretary.

187 (Upon the margin of the foregoing policy is printed in red ink the following, to wit:)

Warranted by the assured not to use any of the guano islands, nor to

load petroleum oils in barrels, or lime under deck. Warrented by the assured that vessels to be loaded with grain from the ports of New York, Philadelphia, or Baltimore, for foreign ports, are to be loaded under the inspection of the surveyor of the board of underwriters, and his certificate as to their proper loading and sea worthiness obtained, or the insurance under this policy to be void.—C. D. V. P.

Warranted by the assured free from claim on account of capture, seizure, detention, or destruction by or arising from any belligerent nation, or by or from any officer, civil or military, or other person claiming to act in their name, or under their authority, or in their behalf.—C. D. V. P.

(The foregoing policy is thus endorsed, to wit:)

March 4, 1868. Pay five pr. ct. return premium under the within ins'e, the vessel having been lost at Baker's Island while the ins'e was suspended and the co. not liable for loss, and cancel this policy.

(Across the face:) R. P. B.

Return premium, 1,375; less 3½, 48.12—$1,326.88. 19th Dec., 1867.

188 Atlantic Mutual Insurance Company. H. A. Barling & A. H. Davis, executors. Honolulu to Baker's Island. Freight. Ship Minnehaha. (15.) $27,500 @ 7 per cent., $1,925; policy, 1.25—$1,926.25.

(In lead-pencil:) Paid Dec. 20, '67.

Record 7, folio 304.

This policy is put in the case as evidence by agreement.

Reed vs. Merch'ts' Mutual Ins. Co.

Jan'y 22d, 1874.

T. W. BLACKISTONE,
Proctor for Appellee.
J. A. L. McCLURE,
Proctor for Appellant.

Opinion.

SAMUEL G. REED & CO.
vs.
MERCHANTS' MUTUAL INS. CO. } In admiralty. Appeal.

The facts which are material to the issue in this case are as follows:

There was sent to the defendant on the sixth day of January, 1868, by Johnson & Higgins, insurance brokers, doing business in New York, a letter in behalf of the appellants to the following effect:

"Enclosed please find two applications for Samuel G. Reed & Co., viz,

189 one on the Minnehaha. . . . Our companies here are averse to Baker's Island risks, and for that reason the owners suspend the risk while at Baker's Island loading. The Atlantic (meaning the Atlantic Mutual Insurance Co. of New York) have taken a large line on vessels and freight."

The policy of the Atlantic Mutual Ins. Co. referred to was dated Dec. 19, 1867, & contained this clause of exemption: It insured the vessel & freight "from Honolulu to Baker's Island, and at and thence to a port in the United States, not east of Boston, with liberty to call at Hampton Roads for orders. It is understood & agreed that the risk is to be suspended from the date of her arrival at Baker's Island, and until the vessel shall have sailed, taken her departure, & obtained a good offing from the island.

Upon receipt of the letter of Johnson & Higgins, or shortly after, to

wit, on the 14th day of January, 1868, the appellees issued their policy of insurance on the Minnehaha for five thousand dollars, insuring her from Honolulu, via Baker's Island, to a port of discharge in the United States not east of Boston, with liberty to use Hampton Roads for orders, "the risk to be suspended while the vessel is at Baker's Island loading."

The vessel was lost at Baker's Island before she had commenced the actual loading, having broken from her moorings in a gale which commenced almost as soon as she had attached herself to the extraordinary arrangements prepared at the island, where there is no harbor or natural anchorage for the security of vessels lying there awaiting cargo.

190 The appellees were duly notified of the loss on the ninth of March, 1868, & promptly on the following day notified the appellants, that, in their judgment, the risk was suspended when the loss occurred, and declined to pay it.

The libellants, on the 28th of November, 1871, instituted a suit against the appellees, to recover for the said loss, in the State courts of Maryland. To this suit the appellees pleaded the statute of limitation, which requires that suit be brought upon such a contract within three years after the cause of action accrued. On the 10th day of May, 1872, the appellants discontinued their suit in the State court, and on the same day instituted these proceedings.

The questions, therefore, are what construction, in view of the facts above related, when considered in connection with the proof in the cause, is to be given to the words in the policy, "The risk to be suspended while at Baker's Island loading."

It is in proof that one of the most dangerous places to which a vessel can go is Baker's Island. It has no harbor. It is subject to violent and constant storms, and is without anchorage, except to cables and anchors of enormous size, fixed at great expense in the open ocean.

The letter of Johnson & Higgins, the brokers who obtained this insurance, shows that the dangerous character of the place was well known to all the New York companies, who refused to take such

191 risks altogether, and the policy of the Atlantic Company above quoted is sufficient to show that, with the officers of that company, it was proximity to Baker's Island which made the risk uninsurable, and not the fact of being engaged in loading there.

It is not necessary in this case to determine what effect would be given to these words of exemption standing alone, and construing their meaning without reference to any other facts. In this case we have abundant proof of the meaning which each of the parties attached to them at the time the policy was issued.

There can be no question, after reading the letter above quoted of Johnson & Higgins in connection with the clause of exemption in the policy of the Atlantic Company, that those brokers thought & meant to say to the appellees that Baker's Island was so dangerous to vessels stopping there that the New York companies would not take such risks, and this the appellees declared, as soon as they received notice of the loss, was their understanding of the meaning of the clause of exemption.

It is altogether probable that the appellees after having been notified of the dangerous character of Baker's Island and of the opinion the New York companies had of the risk of insurance at that place, should have sought to exempt themselves, as those New York companies did, from so great hazard.

192 It does not appear that the risk at Baker's Island was in the fact of loading. The New York company was cautious enough to suspend its risk, even while the vessel was proximate to the island, and the appellees intended to do as they did, and as the letter of Johnson & Higgins suggested that they should do, namely, suspend the risk while the vessel was incurring the extraordinary danger of being at Baker's Island, whether loading or not. And the brokers who obtained the insurance state, on examination, that they considered these words of limitation in the policy of the appellees as a suspension of the risk while at Baker's Island.

It is not difficult to find what was the understanding of the apellants. The testimony of Tooker, who states that after the issuing of the policy of the Merchants' Mutual Ins. Co. he was requested to obtain insurance on the Minnehaha while she was at Baker's Island, to cover the uninsured gap in the voyage, sufficiently determines the construction given to the words of exemption in this policy by her owners.

The letter of Johnson & Higgins, of Jan'y 6th, 1868, assured the appellees that the owners suspended the risk while at Baker's Island loading, and their efforts to secure other insurance for that interval demonstrates that they did not think the risk covered by this policy.

So we have the construction given to the words of this contract 193 by both the appellees & appellants, and by the disinterested brokers who procured it to be made, a construction agreed upon before the loss, and it ought not to be varied now.

That even if this be not so, we think this is a stale demand. While the courts of admiralty are not bound by the statutes of limitations of the States in which they sit, yet where there is no equitable or good reason to do otherwise, they follow an analogous rule.

The appellants were obstructed by no absence at sea, or detention abroad by reason of their maratime employment, nor by any other good cause, from bringing their suit within a reasonable time after the prompt refusal of the appellees to consider themselves liable under their policy.

They waited over three years before they undertook to assert any claim, and, after having been defeated in the State court on this ground, we think it too late to ask an admiralty court to follow a different rule.

The appeal will be dismissed.

Decree of circuit court.

In the circuit court of the United States for fourth circuit & district of Maryland.

SAMUEL G. REED
vs.
MERCHANTS' MUTUAL INSURANCE COMPANY of Baltimore.

194 This cause standing ready for hearing, & the proceedings & evidence in said cause & the arguments of the proctors for the respective parties having been read, heard, & duly considered, it is thereupon, this sixth day of April, eighteen hundred and seventy-four, adjudged, ordered, & decreed that the appeal of Samuel G. Reed & the libel filed by him be, and the same are hereby, dismissed with costs in the district court & and in this court.

HUGH L. BOND,
Ct. Judge.

APRIL 6, 1874.

From which said decree, so as aforesaid rendered, the said Samuel G. Reed, by his proctors in open court here has prayed an appeal to the next term of the Supreme Court of the United States, to be held at Washington, on the second Monday in October next, and to him it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same is transmitted accordingly.

Appeal bond.

Know all men by these presents that I, Grenville Loud, are held and firmly bound unto the Merchants' Mutual Insurance Company, of
195 Baltimore, in the full and just sum of three hundred dollars lawful money, to be paid to the said Merchants' Mutual Insurance Company of Baltimore, its certain attorney or assigns, to which payment well and truly to be made I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with my seal, and dated this third day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately at a circuit court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord eighteen hundred and seventy-four, in a suit depending in the said court, between Samuel G. Reed, appellant, and the said Merchants' Mutual Insurance Company of Baltimore, appellees, a decree was rendered and passed against the said Samuel G. Reed, and the said Samuel G. Reed having entered and obtained an appeal to the Supreme Court of the United States, to be held at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said Samuel G. Reed shall prosecute his said appeal to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

196 GRENVILLE LOUD. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. BENSON THOMAS.

Which said bond is thus endorsed, to wit:

"Bond approved, 4 June, 1874.

"WILLIAM F. GILES."

In testimony that the aforegoing is a true copy of the record and proceedings in the cause aforesaid, in the circuit court aforesaid,

I hereunto subscribe my name and affix the seal of the said circuit court this 14th day of October, 1874.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 231. Samuel G. Reed, appellant, vs. The Merchants' Mutual Insurance Company of Baltimore. Maryland C. C. U. S. Filed 7th November, 1874.

REC. 236—1

APPELLANT'S BRIEF.

SUPREME COURT OF THE UNITED STATES.

No. 27.

SAMUEL G. REED, APPELLANT,

vs.

THE MERCHANTS' MUTUAL INSURANCE COMPANY OF BALTIMORE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

SUPREME COURT OF THE UNITED STATES.

No. 27.

SAMUEL G. REED, APPELLANT,

vs.

THE MERCHANTS' MUTUAL INSURANCE COMPANY OF BALTIMORE, APPELLEE.

STATEMENT OF FACTS.

On or about Nov. 1, 1867, Samuel G. Reed, the libellant, was owner of the ship "Minnehaha," then lying at Honolulu, Sandwich Islands, and remained the owner of said ship until she was lost, as hereinafter stated. On or about the 7th of said November, the said ship "Minnehaha" sailed from Honolulu, *via* Baker's Island, with the intention of there taking in a cargo of guano to a port of discharge in the United States. On the fourteenth day of January, 1868, the Merchants' Mutual Insurance Company, of Baltimore, libellee, in consideration of a premium by the libellant paid duly, issued and granted to the libellant its policy of insurance upon the said ship "Minnehaha," lost or not lost, at and from Honolulu, *via* Baker's Island, to a port of discharge in the United States, the risk to be suspended while at Baker's Island loading, and thereby promised to insure for the libellant $5,000 on the body, tackle, apparel and other furniture of said ship, the loss, if any, to be payable thirty days after proof of loss and proof of interest and adjustment exhibited to the assurers, the said ship being valued in said policy at $60,000, against the usual perils of the sea and other perils in said policy mentioned. The ship sailed in ballast from Honolulu on or about the 7th of November, 1867, being at the time in all respects tight, stanch and seaworthy, as aforesaid, and arrived near Baker's Island aforesaid on the afternoon of the twentieth day of November, 1867. Said ship came to her mooring near said island in safety, shortly after which a heavy gale and heavy surf arose. The gale and surf continued with violence until the 3d of De-

cember, 1867, when the said ship parted her moorings, and was by the perils of the sea totally wrecked and lost. At no time after the arrival of said ship at Baker's Island aforesaid was it possible to discharge ballast or to receive cargo or to commence the process of loading, or even the preparation for loading.

The violence of the winds and waves and their adverse course and direction prevented the ship from slipping her cables and getting to sea or otherwise escaping the perils that surounded her; and said ship, on said Dec. 3, 1867, and before her arrival at the port of discharge named in said policy, by the perils and dangers of the sea was tot lly wrecked and lost. Proof of loss and proof of interest and adjustment under said policy issued was duly presented to said Merchants' Mutual Insurance Company, and payment demanded therefor. More than thirty days have elapsed since said proofs were presented, and no part of the sum insured by said policy has been paid. (*Transcript of record, pp.* 1, 2, 3.)

APPELLANT'S BRIEF AND POINTS.

POSITIONS.

I. The policy covers the voyage during which the loss occurred, and the complainant *prima facie* is entitled to recover the amount of such loss. The vessel was insured from Honolulu, *via* Baker's Island, to her port of discharge in the United States not east of Boston.

That it was the intention of the assured and insurer that she should stop there is thus made plain.

II. The expression of the policy, "The risk to be suspended while the vessel is at Baker's Island loading," has no bearing upon the rights of the parties, because no loading had been made or attempted. Being in the proximity of Baker's Island cannot be regarded as extra hazardous, and was not prohibited in terms or by implication. The act of loading the vessel at a distance from the shore might have been so regarded.

Another question, however, namely, What does that clause mean? comes up. In solving that question it is necessary to consider what the legal quality or character of that clause is. The clause is plainly an exception, excepting out of the policy some risk or other which the insurer would otherwise take upon himself; but for that clause the vessel to be covered by the policy must have proceeded without interruption directly from Honolulu to some port or place in the United States; with that clause contained in the policy the vessel may stop at Baker's Island; nay, more, she may load guano there, only while the process of loading is in progress the risk is to

be suspended. That specific risk is excepted out, and just that, not more.

An effort is made to give to this excepting clause a broader signification than its terms bear, so as to make it include a suspension of the risk before the process of loading shall begin. But all clauses in a policy of insurance cutting down the risk, all exceptions of that nature, are the words of the insurer. It is he who holds the pen in inserting such a clause, and the familiar rule very cogently applies, that in case of the ambiguity of such a clause (if there be an ambiguity) a construction is to be given least favorable to him.

2 Parsons on Contracts, 19 (ed. 1860).
Dann *v.* Spurrier, 3 B. & P. 399.
Doe *v.* Dixon, 9 East, 15.
Throckmorton *v.* Wacy, Plowd. 154–161.
Melvin *v.* Prop. &c. on Merrimack River, 5 Met. 27.

The fact that the authority for the vessel to stop there and load there is derived from that clause sufficiently shows why it is in the policy; but the clause in effect says, the vessel may proceed *via* Baker's Island towards her port of destination in the United States; she may touch and stay at Baker's Island; she may load guano there; but (and here comes the qualification) the risk is to be suspended after the process of loading begins and while it continues.

The obvious meaning of these words, sustained by the above principle of interpretation, is sought to be met in two ways, (1) by evidence of usage in the business of marine insurance giving a peculiar and unusual signification to the clause; (2) by evidence to show that the risk is as great before the process of loading begins as thereafter.

Usage is always admissible to explain what is doubtful, never to contradict what is plain.

Hearne *v.* Marine Ins. Co., 20 Wall, 492.
Haskins *v.* Warren, 115 Mass. 535 & 536.
Dickenson *v.* Gay, 7 Allen, 34.
Black *v.* Bachelder, 120 Mass. 171.

Nothing can be plainer than the phrase, "The risk to be suspended while the vessel is at Baker's Island loading."

Another rule of interpretation is applicable, namely, that full force and effect should be given to every word in a contract.

2 Parsons on Contracts, 16 & 17 (ed. 1860).
Evans *v.* Sanders, 8 Port. 497.
Stratton *v.* Pettit, 16 C. B. 520.

What would be the obvious meaning of the phrase, "The risk to be suspended while the vessel is at Baker's Island"?

The obvious meaning would be that the risk was to be suspended *throughout all the time that the vessel should be* at Baker's Island. If to that phrase the word "*loading*" be added, and any force or effect be given that word whatever, does not that word qualify and limit the phrase as it would otherwise stand, and does it not limit the operation of the phrase to only a part or portion of the contemplated stay at Baker's Island, namely, that part of it during which the process of loading is in progress?

The effort made to establish a usage is too strong, the undertaking covers too much ground. The effort is to show that the word "*loading*" in a policy of marine insurance invariably and universally means the being in a port or place for the purpose of loading, together with the process of performing that operation.

Such a usage as that, if shown, is not evidence. If it be true that such is the meaning of that word *in this case* of marine insurance, it is true that such is, and is to be hereafter, the meaning of that word in all cases of marine insurance.

Is this Court prepared to go that length?

If the evidence were, that, owing to Baker's Island being a perilous place to touch and stay and load at, marine insurers had adopted a clause suspending the risk there, and for that purpose had come to use a certain phrase to which in the special instance they gave a peculiar and technical meaning different from the natural import of the words, such evidence would be admissible if knowledge thereof were brought home to the assured; but the evidence offered here has no such limitation upon it. Indeed, no serious effort is made to show that in the business of marine insurance there is any phrase used as applicable to Baker's Island.

Coale, the agent of the defendants, is very weak on this. (Testimony of Coale, twenty-eighth cross-interrogatory, page 47.)

Moreover, if Coale regards himself as deceived by the letter of Johnson & Higgins, how can he say that the policy in suit has the same meaning as the clause in the Atlantic policy? Obviously, to his mind, the word "*loading*" operated as a limitation upon the clause in the policy in suit.

As to the evidence that the risk is not increased by the process of loading, that, if true, is immaterial. If the risk be as great when lying there waiting for cargo as when lying there taking in cargo with one or more lighters in contact with the vessel, and that, too, in the open sea where there is always more or less swell, and the peril of squalls or gales more or less sudden, yet such fact does not help construe this policy.

If the insurer would have excepted the entire stay at Baker's Island, he should have said so in his policy.

Besides, none of the witnesses who testify upon this point have ever been to Baker's Island; and their opinion is mere conjecture.

The letter of Johnson & Higgins, which accompanied the application for this insurance, cannot affect the insurance.

Even if the statement in that letter, "Our companies here (New York) are averse to Baker's Island risks, and for that reason the owners suspend the risk while at Baker's Island loading," were *fraudulently* made, such would be immaterial, if it did not influence Coale to take the risk, and being immaterial, though made with a fraudulent purpose, it would not vitiate the insurance.

1 Phillips on Insurance, §§ 539, 540 and 541.
Salem India Rubber Co. *v.* Adams, 23 Pick. 256.

But there is no pretence that it was fraudulent.

A material representation must be a representation touching the risk itself; that is, touching either the subject-matter of the risk (whether vessel, cargo or freight) or else the voyage, unless the insurer was unacquainted with the nature of the risk to be undertaken.

A mere statement that other companies had made certain contracts has no bearing whatever upon the risk, and is immaterial, inasmuch as Coale, the actuary of the defendant company, and who made this insurance and issued the policy, admits that he was aware of the risk of Baker's Island. (Testimony of Coale, 29th Cross-Int., p. 47.)

Coale was in no wise misled as to the risk, nor as to any material matter. Moreover, Coale says it is doubtful whether the contents of the letter of Johnson & Higgins influenced him to take this risk. He is unable to say that it did influence him to take it. (Testimony of Coale, Cross-Int. 23d, p. 46.) The representation was therefore immaterial.

1 Parsons on Marine Ins. 465.
Flinn *v.* Tobin, 1 Moody & W. 367.
Flinn *v.* Headlam, 9 B. & C. 693.

It is claimed that this suit is brought too late. A statute of Maryland is relied on in the words following: —

"All actions of account, actions of assumpsit or on the case, actions of debt on simple contract, or for rent in arrears, detinue and replevin, all actions for trespass for injuries to real or personal property, shall be commenced or sued within three years from time the cause of action accrues."

Statutes of limitations are construed strictly.

Besides, they are in derogation of the common law; and all such statutes are strictly construed.

The claims of the libellant cannot be resisted upon the allegation of laches; he instituted a suit in the State Court which had no admiralty jurisdiction, abandoned it, and sought his remedy in a court which exercised such jurisdiction. The Statute of Limitation of the State of Maryland did not take away or deprive the libellant of his right to proceed in the admiralty. It has no effect upon the rights or remedies to which the libellant is entitled, as shown by the facts in proof. There is no proof having a tendency to show that the insurer has been injured by any supposed laches.

Sustaining the bill will not produce public or private inconvenience. There is not, therefore, any legal or equitable ground upon which to deprive the party of his rights by reason of supposed laches.

Pickering *v.* Lord Stamford, 2 Vesey, Jr. 583.

Even if in actions *in personam* in the admiralty, the Courts would be somewhat influenced by the limitation laws of the district where the suit is begun, which we do not understand to be established as the law, yet this statute is to an uncommon degree limited in its scope. The statute does not purport *to bar the claim*, but merely certain specified classes of *common-law actions*. It makes no mention of the action of trover. For although trover was in its origin an action of trespass on in the case, it can hardly be considered as such now.

The Statute of Frauds contains the provision that "no *action* shall be brought," etc., etc., unless, etc., etc.

It contains another provision, "No contract shall be good," etc., etc.

Smith on Contracts, 39 and 73.

The Courts have discriminated between these two provisions; and in the one case have held the contract valid, although no action could be brought thereon at the common law, while in the other case they have held the contract *in toto* void, or rather they have declared that there was no contract.

Haynes *v.* Nice, 100 Mass. 329.

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Laches and Usage

Allore v. Jewell 94 U.S. Rep.
4 Otto 506-512

Bingham v. Wilkins Crabbs Rep. 50

Brown v. Jones 2 Gallis. 477

Willard v. Dorr 3 Mason 95